राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

बुधवार, 01 नवम्बर, 2023 / 10 कार्तिक, 1945

हिमाचल प्रदेश सरकार

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

Dated, the 23rd August, 2023

No. Shram (A) 6-2/2020 (Awards) Dharamshala.—In exercise of the powers vested under section 17 (1) of the Industrial Disputes Act, 1947, the Governor, Himachal Pradesh is

pleased to order the publication of awards of the following cases announced by the Presiding Officer, Labour Court, Kangra at Dharmshala on the website of the Printing & Stationery Department, Himachal Pradesh *i.e.* "e-Gazette" :—

Sl. No.	Ref. No.	Petitioner	Respondent	Date of Award/Order
1.	83/19	Tej Singh	Employer L&T Company Bharmour	01-06-2023
2.	145/19	Krishan Chand	Registrar Indus International Univ.	03-06-2023
3.	144/19	Ram Kumar	-do-	03-06-2023
4.	143/19	Pawan Kumar	-do-	03-06-2023
5.	142/19	Balbir Chand	-do-	03-06-2023
6.	269/15	Jagdish Kumar	The D.F.O. Mandi	05-06-2023
7.	51/21	Bhram Dev Sharma	Sh. Jyoti Malhotra & Sons Mandi	14-06-2023
8.	179/16	Hem Singh	The E.E. HPSEBL, Bilaspur	15-06-2023
9.	84/20	Leela Devi	Town Planning Officer Sunder Nagar	15-06-2023
10.	323/12	Kanta Devi	The E.E. HPPWD, Joginder Nagar	15-06-2023
11.	547/16	Raj Kumar	The E.E. HPSEBL, Killar	21-06-2023
12.	101/17	Prem Prakash	Project Manager, M/S Batot Hydro	22-06-2023
13.	136/17	Shakuntla Devi	B.M.O. Bilaspur	30-06-2023
14	548/16	Jan Dei	B.D.O. Pangi	30-06-2023
15.	277/16	Leela Devi	B.D.O. Pangi	30-06-2023
16.	877/16	Toti @ Sonu Kumari	The D.F.O. Pangi	30-06-2023
17.	91/20	Dalveer Singh	Director, Atal Bihari Vajpayee	30-06-2023
18.	271/14	Ajay Kumar	M.D. H.P.G.I.C	30-06-2023

By order,

Sd/-
AKSHAY SOOD,
Secretary (Lab. & Emp.)

IN THE COURT OF SHRI HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-**INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 83/2019

Date of Institution : 18-7-2019

Date of Decision : 01-6-2023

Shri Tej Singh s/o Shri Arjun, r/o Village Changui, P.O. Khani, Tehsil Bharmour, District Chamba, H.P. . .*Petitioner.*

Versus

The Employer/Project Manager, L&T Company, VPO Lahal, Tehsil Bharmour, District Chamba, H.P. . .*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the petitioner : Sh. Rohit Kumar, Ld. Adv.

For the respondent : Sh. Nitin Paul, Ld. Adv.

AWARD

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short).

> **"Whether termination of services of Shri Tej Singh s/o Shri Arjun, r/o Village Changui, P.O. Khani, Tehsil Bharmour, District Chamba, H.P. w.e.f. 01-05-2018 by the Project Manager, L&T Company, V.P.O. Lahal, Tehsil Bharmour, District Chamba, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer/management?"**

2. The case of the petitioner, in brief, is to the effect that his services were engaged as steel fitter by the respondent company w.e.f. 23.12.2016 and he worked in continuity till 5.5.2018 when his services were disengaged without serving a notice or paying compensation and in utter violation to the provisions contained in Section 25-F of the Act. The petitioner raised the issue with Labour Office by way of a demand notice and the present reference was thus made by the appropriate Government. The petitioner has thus prayed for his reinstatement and all other benefits including seniority, continuity in service etc.

3. The respondent has resisted and contested the claim on the plea of maintainability and on the plea of estoppel. It has been highlighted that petitioner has not come to the court with clean hands. It is submitted that petitioner was infact a employee of M/s Leela Devi contractor and Shri Dina Nath who was owner of this agency. Shri Dina Nath had expired on 18 March, 2018 and thereafter his successors were unable to continue the work and they did not give further employment to the petitioner. It is also submitted that petitioner was neither the employee of the respondent company nor anything was paid by the respondent to him. It is explained that all the

dues have been paid to him by his contractor and in case any amount is left unpaid, it is the matter between the contractor and the petitioner and respondent has no role in the matter.

4. The petitioner has filed rejoinder and reaffirmed the averments so made in the petition and denied those made in the reply. It is asserted that petitioner was not the employee of Shri Dina Nath company but he was under the direct control of the respondent company. The work of the respondent was permanent in nature which could not have been outsourced. It is submitted that the respondent was made to sign some blank documents and those documents can not be used against him. He has prayed that the claim be allowed.

5. From the pleadings of the parties and language of the reference, following issues were framed for determination on 29 August 2022:—

1. Whether the act of termination of services of the petitioner w.e.f. 01-05-2018 by the respondent is/was illegal and unjustified, as alleged? . .*OPP.*

2. If issue no.1 is proved in affirmative, to what relief, the petitioner is entitled to? . .*OPP.*

3. Whether the claim petition is not maintainable, as alleged? . .*OPR.*

4. Whether the petitioner has not come to the Court with clean hands and has suppressed the material facts, as alleged. If so, its effect? . .*OPR.*

5. Whether the petitioner is estopped by his act, conduct and acquiescence to file the claim, as alleged? . .*OPR.*

Relief

6. I have heard learned Counsels for the parties at length and considered the material on record.

7. For the reasons recorded hereinafter, the findings of this Court on the above issues are as under:—

Issue No.1	:	Negative
Issue No. 2	:	Negative
Issue No. 3	:	No
Issue No. 4	:	Yes
Issue No. 5	:	No
Relief	:	Petition is **dismissed** per operative portion of the Award

REASONS FOR FINDINGS

Issues No.1, 3, 4 & 5:

8. All these issues being interlinked and interconnected are taken up together for determination however separate findings shall be recorded on these issues.

9. The factual controversy involved in this case is whether the petitioner was employee of the respondent or that of the contractor. The petitioner alleges that he was employee of the respondent, whereas, the respondent has pleaded that petitioner was employee of M/s Dina Nath and Company and later on Shri Dina Nath expired and the company could not give employment to this workman hence, his services were discontinued. The petitioner has appeared as PW1 in the witness box and tendered his affidavit Ext.PW1/A. In his affidavit he has submitted that he was employee of the respondent company and not of the contractor. He has examined one Shri Mohinder Singh as PW2 who has also stated in the similar manner. It is clear from the statement of this Shri Mohinder Singh that he claims himself as ex employee of the company through appointment letter. No appointment letter was shown by him in the court. He denied the case of the respondent during the cross-examination. The petitioner has also denied the case of the respondent and refused to admit that he was employee of M/s Leela Devi and company which was run by Shri Dina Nath who expired in 2018. The statement of petitioner is self serving and statement of his witness Shri Mohinder Singh (PW2) is vague. Any person can come forward and depose that he had seen the petitioner working with the respondent. Much weight can not be attached to this type of statement. The respondent, on the other hand, has tendered on record the extracts of the registers of the contractors as Ext.RW1/B, Ext.RW1/C and Ext.RW1/D. All these registers shows that some of the workmen were working under M/s. Santosh Kumar for the respondent and others were working with M/s. Dina Nath for the respondent. The petitioner has been shown at serial no.4 of the muster roll maintained for August 2017 by M/s Dina Nath and Company and similar fact is clear from the muster rolls for the month of September 2017, October 2017, November and December 2017. In February 2018 this M/s Dina Nath was replaced by M/s Leela Devi and petitioner has been shown at serial no. 2 and his presence has been marked in February and he has worked for 21 days. Muster rolls for March 2018 and April 2018 has also been placed on the record showing that the petitioner has worked for 13 and 20 days respectively. Careful perusal of these muster rolls show that they were maintained by M/s Leela Devi and not by the respondent. The earlier muster rolls were maintained by M/s Dina Nath and not by the respondent. It is therefore, very much clear that petitioner was not working with the respondent but he was working earlier with M/s Dina Nath and with M/s Leela Devi. The petitioner has not assailed these documents during the cross-examination conducted upon Shri Harish Kumar (RW1) who has produced these documents before the court. It is not put to him that these documents are either fabricated or altered in some manner. When these documents have not been assailed at all, there are no reason to disbelieve them. The case of the respondent has been consistent and throughout to the effect that the work of the company was being executed through contractors and the respondent has not engaged its own workers for the same. The contractor was paid by the company and the workmen were paid by the contractor. This fact is very much proved on the record was from the muster rolls produced by RW1 Shri Harish Kumar who is Manager Administration of the respondent company. The petitioner has led oral and self serving evidence on the record is not sufficient to overthrow the documentary evidence led by the respondent. Had the petitioner not worked with M/s Dina Nath and Company and later with M/s Leela Devi and Company, these muster rolls could not have been prepared. The petitioner would have assailed the correctness of these documents. The petitioner was at liberty to examine any of the workmen shown in these muster rolls in rebuttal and made to them to speak that these muster rolls were fictitious and they have never worked with any contractor. Since there is no evidence on record led in rebuttal and these documents has not been assailed by the petitioner during the cross-examination there is no reason to disbelieve these documents. It is therefore, proved for the aforesaid discussion that the petitioner was the employee of the contractor and not of the respondent company.

10. It is the duty of the court to answer the reference in the manner as it has been framed and not to travel beyond the reference. In the case in hand, the reference received by this court is regarding termination of the services of Shri Tej Singh/petitioner without complying with the provisions of the Industrial Disputes Act by the respondent. The respondent herein has specifically

taken the stand in the reply to the effect that petitioner was not its employee. This controversy is also liable to be resolved in order to answer this reference completely. When this controversy is examined in the light of the evidence adduced and the pleadings made, it is very much clear that respondent has been able to prove that it was not engaging any of the workmen directly but work was awarded to contractors and various workmen working under the contractor were deployed in the work by the contractors. The petitioner is also proved to be one of them and the petitioner has thus failed to prove that he was employee of the respondent company. Had the petitioner been the employee of the company there must be any appointment letter issued in this behalf and company must have maintained the attendance record of the petitioner and others like him. Had the petitioner been the employee of the respondent, the petitioner would have produced on record the extract of his saving passbook to show that wages were credited in his account from the account of respondent company and not from somewhere else. No evidence has been led by the petitioner and self serving statement of the petitioner is not sufficient to prove his case. Similarly the statement of the witness is also vague. It is not sufficient to conclude that the petitioner was employee of the respondent and his services were terminated without following the process of law. Once the petitioner is proved to be a employee of contractor therefore provisions of Section 25-F are not applicable to his case and therefore, no violation is proved. So far as retention of juniors is concerned, this plea is also not applicable to the petitioner for the simple reason that he was not the workman of the respondent and secondly, there are no pleadings regarding Section 25-G of the Act. The petitioner has made effort to lead evidence on this aspect which can not be relied upon in the absence of any foundation in the pleadings. It is, therefore, held that petitioner has failed to prove that he was employee of the respondent company and his services were terminated without following the provisions of the Industrial Disputes Act. The petitioner is proved to be a workman of the contractor and he was not the employee of the respondent. Thus violation of Sections 25-G and 25-H of the Act is also not proved. The petitioner has certainly not come to the court with clean hands and he has concealed the material facts from the court. He is proved to be the employee of the contractor, but he has never revealed this fact till date and this fact has been brought on the record by the respondent. The claim is maintainable for the simple reason that it has been filed in support of the reference and it is different matter that the claim has failed on merit.

11. There can not be any estoppels against the petitioner as such plea is not available to the respondent in such like cases. In these facts and circumstances of the case issue no.1 is held decided against the petitioner and issues no.4 & 5 are held in favour the respondent and issue no.3 also against the respondent. In view of the aforesaid discussion it is held that petitioner is not entitled any relief as claim petition merits dismissal and it is ordered accordingly.

RELIEF

12. In view of my above discussions, the present claim petition fails and is accordingly dismissed. Parties are left to bear their own costs.

13. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 1st day of June, 2023.

Sd/-
(HANS RAJ),
Presiding Judge
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 145/2019

Date of Institution : 02-12-2019

Date of Decision : 03-6-2023

Shri Krishan Chand s/o Shri Pritam Chand, r/o VPO Panjwar, Tehsil Haroli, District Una, H.P. . .*Petitioner.*

Versus

The Registrar, Indus International University Bathu, Tehsil Haroli, District Una, H.P.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the petitioner : Sh. V.K. Vashistha, Ld. Adv.

For the respondent : Sh. Ankush Kumar, Ld. Adv. (Vice)

AWARD

The petitioner has filed this direct claim under Section 2-A Sub Section (2) & (3) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) against respondent.

2. The case of the petitioner as made out from petition is that he was engaged as Security Guard by the respondent on monthly wages of Rs. 3500/- as is evident from salary slip and statement of account. The petitioner joined his duties as Security Guard on 11.5.2010. No formal appointment letter was given to him, though identity card was issued in his favour. The petitioner worked till 1.10.2018 as a Security Guard without any break and completed 240 days in each calendar year. He discharged his duties with full devotion and sincerity. The respondent did not increase his salary despite requests and also did not provide him ESI facility and other benefits. He therefore, made complaints regarding the same to his superior officers. His services were terminated by oral order on 1.10.2018 without explaining the reasons. The petitioner raised the demand before the labour office in which conciliation proceedings took place but the respondent refused to re-engage the petitioner and therefore, the Labour-cum-Conciliation Officer gave permission to approach directly to the court to seek relief. The case of the petitioner is thus is to the effect that there has been violation of Section 25-F of the Act and principle of 'Last come First go' was also not followed, and therefore, the petitioner was entitled for re-engagement, continuity in service, seniority, full back wages along with interest and litigation costs.

3. The respondent has resisted and contested the petition on the plea of maintainability, cause of action, locus standi, estoppel etc. On merits, the respondent explained that petitioner was engaged to watch the construction material during the construction of the University building. He was assigned the duty of guard but he failed to discharge the same. The petitioner used to proclaim that he was a Security Guard, but he did not possess essential qualification and skill. After the construction of the building was over the University did not turn the respondent out of the job. It was by mistake that Identity Card showing him as a Security Guard was issued to the petitoner which was later on withdrawn as the petitioner did not fulfill the qualification, training and skill for the post of Security Guard. The petitioner used to create indiscipline in the University by joining

three like minded workers and he has never performed the duties assigned to him. He was found drunk during surprise check. Several oral and written warning explanation were called for. The petitioner was given an opportunity to mend his behaviour but in vain and taking into account the position, it was decided by the board of management that the Security Guards be requisition from outsource agency. When the petitioner was asked to join his duties through outsourcing agency, he refused to work. Other allegations are denied and it is submitted that several letters were sent on the address of the petitioner but same were not received or replied. It is prayed that the petitioner has no case on merit, and, therefore, the claim be dismissed.

4. The petitioner has filed rejoinder and reaffirmed the averments so made in the petition and denied those made in the reply.

5. From the pleadings of the parties and language of the reference, following issues were framed for determination on 30.7.2021:—

1. Whether the termination of services of the petitioner by the respondent w.e.f. 01-10-2018 is/was illegal and unjustifiable as alleged? . .*OPP.*

2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . .*OPP.*

3. Whether the claim petition is not maintainable, as alleged? . .*OPR.*

4. Whether the petitioner has no locus standi and cause of action to file the present petition, as alleged? . .*OPR.*

5. Whether the petitioner has not come to the court with clean hands and has suppressed the material facts, as alleged? . .*OPR.*

6. Whether the petitioner is estopped to file the present claim by his act and conduct, as alleged? . .*OPR.*

Relief

6. I have heard learned Counsel for the parties at length and considered the material on record.

7. For the reasons recorded hereinafter, the findings of this Court on the above issues are as under:—

Issue No. 1	:	Decided accordingly
Issue No. 2	:	Decided accordingly
Issue No. 3	:	No
Issue No. 4	:	No
Issue no. 5	:	No
Issue No. 6	:	No
Relief.	:	Petition is partly allowed awarding lump sum compensation of Rs.1,00,000/ per operative portion of the award.

REASONS FOR FINDINGS

Issues No.1 & 2:

8. Both these issues are taken firstly for discussion as both the issues are closely connected to each other.

9. Both the parties have raised factual dispute in this case which requires adjudication with the assistance of evidence led by them. The pleadings are foundation of the case, and therefore, are very material for the just decision of the case. The petitioner has claimed that he was engaged as Security Guard on monthly wages of Rs. 3500/- on 11.5.2010. The respondent, on the other hand, has not denied this fact but pleaded that infact the construction work of the building of the University was going on, therefore, the petitioner was engaged as night Guard to look after the construction material. No appointment letter was ever issued in favour of the petitioner and no terms and conditions were settled. No such document has been placed on the record. When the respondent, who is the employer, has not executed any document with the petitioner, the employer can not be lead oral evidence about the status of the petitioner. Had the respondent settled the terms and conditions of the employment in writing with the petitioner, those documents could have been easily filed and proved on the record. When no such terms and conditions are settled the plea as taken by the petitioner can not disbelieved particularly when the petitioner has made the statement on oath and successfully withstood the test of cross-examination. It is proved from the statement of the petitioner that the his services were engaged as Security Guard by the respondent.

10. The reply filed by the respondent also shows that the status of the petitioner has not been seriously disputed. It has been pleaded in para no.3 of the reply that once the construction work of the building was complete the petitioner was not turned out of the job. Even if this plea of the respondent is accepted as correct, it is well understood that after the construction of the building was over no other work rather than that of the Security Guard was taken from the petitioner. It is not the pleaded case of the respondent that some other work was assigned to the petitioner after the construction of the building was completed. The respondent has further taken a very unusual plea to the effect that by mistake the Identity Card of Security Guard was issued to the petitioner which was later on withdrawn. Once the respondent has not specifically pleaded as to which work was assigned to the petitioner after the construction of the building was complete, the respondent can not contend that the Identity Card of Security Guard was issued in favour of the petitioner by mistake. The respondent is absolutely silent on the aspect as to what was the nature of the work assigned to the petitioner after the construction work of the building was over. Had the respondent specifically pleaded that some other work was assigned to the petitioner after the construction was complete, then the court could have considered the plea of the respondent to the effect that by mistake the Identity Card of the Security Guard was issued in favour of the petitioner. When no such plea has been taken by the respondent, the plea of mistaken identity card does not withstand the test of truthfulness.

11. The respondent is fully exposed from the contents of the reply filed on the record. The respondent has pleaded that the petitioner did not possess the qualification/training and skill of Security Guard. The respondent has nowhere placed on record any document showing the essential qualifications for a Security Guard. In case the petitioner was not engaged as a Security Guard then it was for the respondent to plead and proved as to what was the specific work being taken from him when the work of the building was completed long back and the petitioner remained in the services of the respondent till the year 2018.

12. The unreasonableness of the case of the respondent is further exposed from the contents of the reply so filed. It is pleaded that in the year 2018 it was decided that the work of the

Security Guards shall be given to some external agency on outsource basis and the petitioner was asked to work through such outsource agency. On the one hand, the respondent claims that the petitioner did not possess the requisite qualification for the post of Security Guard and, on the other hand, the respondent pleads that it was decided that the Security Guards shall be engaged through outsource agency and petitioner was asked to work through outsourcing agency. In case, the petitioner was not qualified for being engaged as a Security Guard then how he could have worked through outsource agency as Security Guard? The respondent has pleaded that one Shri Pawan Kumar had joined as Security Guard through outsource agency but he gave up the work at the later stage. The question that arises for consideration is that when Shri Pawan Kumar also did not possess the requisite qualification for being engaged as Security Guard, then how his services were hired from outsource agency. The respondent can not be permitted to blow hot and cold in the same breath. It is proved from the statement of the petitioner recorded in the shape of affidavit Ext.PW1/A that he was engaged as a Security Guard by the respondent. It is for the reason that the Identity Cards were issued in the name of the petitioner. The identity card has been tendered on record as Ext. P3 and P4. How the identity card could be issued in favour of the petitioner by mistake when he was not a Security Guard. This plea is false on the face of it and can not be accepted. The petitioner has tendered on record various documents and in his cross-examination he has specifically denied the suggestions to the contrary. There is nothing in the cross-examination of the petitioner which could be taken to establish that his services were not engaged as a Security Guard. The respondent has examined Dr. Palwinder Kumar as RW1 who has tendered some documents on the record. There is no plausible explanation on his part to prove that the petitioner was not working as Security Guard with the respondent. He has rather come up with the different case to the effect that the conduct of the petitioner was not appropriate during his duty time. Shri Rakesh Kumar has been examined as RW2 in the witness box who too is the employee of University. His affidavit also shows that the petitioner was given the work of Security Guard. His statement also does not in any manner prove that the petitioner was not working as Security Guard with the respondent. The salary slip of the petitioner Ext.P2 also shows that his designation has been shown as Security Guard. No pay slip has been placed on the record by the respondent for the period when the designation of the petitioner was changed as claimed by the University. The respondent has placed on record the inspection report of Sh. Manish Rana, Ext. R-5 pertaining to November 2010 in which the status of the petitioner and three others has been shown as Security Guards. Since there is no post of the guard in the colleges and Universities without hostels as the work during the day time is done by the peon etc. and not by the Guards. Guards are engaged in those institution where hostel facilities available. Thus showing the status of the petitioner as Guard even in the year 2018 proves the case of the petitioner to the effect that his services were engaged by the respondent as Security Guard and he has worked in the same capacity till the date of his termination.

13. Since there is no dispute of the fact that petitioner has worked w.e.f. the year 2010 to 2018 in continuity therefore it is understood that he has worked for more than 240 days in 12 calendar months preceding his termination and therefore his services could not have been terminated without complying with the provisions of Section 25-F of the Act. In case the University has decided to engage Security guards or Guards on outsource basis, the services of the petitioner could not have been ended in this manner. In case the services of the petitioner were to be terminated, it was the duty of the respondent to have complied with the provisions contained in Section 25-F of the Act. Either one month notice should have been issued or the payment in lieu of one month's salary should have been made. Apart from this it was the duty of the respondent to have calculated the compensation as per provisions of Section 25-F of the Act which was not done in this case. The respondent has though come up with the plea that some cheques were sent in the name of the petitioner but he did not accept the same but such practice will not serve the purpose as compensation was never calculated as was required for the purpose of Section 25-F of the Act.

Thus the termination of the services of the petitioner were abrupt as in violation of Section 25-F of the Act.

14. The petitioner has further contended that principle of 'last come first go' has been violated in this case. However no evidence led on this aspect by the petitioner. Infact it has come on the record that four security guards were terminated on the same day and therefore, the question of senior and junior has not arisen at all. No workman/security guard has been named either in the pleadings or in the evidence who was junior to the petitioner and his services were not terminated. When such is the position it is the case of the petitioner for violation of Section 25-G is not established.

15. The respondent has tried to make out a case against the petitioner by placing documents on the record to show that he was not working smoothly and he causing his convenience in the hostel and other places in the university. Several show cause notices have been issued to the petitioner. These allegations have no relevance in the present controversy and the respondent has not terminated the services of the petitioner on the ground that his misconduct was established. Neither any inquiry was conducted into the allegations nor there is report of inquiry officer showing that the petitioner was not fit to be retained on account of indiscipline on his part. It is also not the case of the respondent that the services of the petitioner were terminated as a mark of punishment for his misconduct. When such is the position, the documents filed on the record to show that petitioner was not behaving properly in the University are not relevant for the purpose of this case and nor any fact is established from these documents.

16. The petitioner has filed several other documents on the record which are Ext.P5 (notice) letter to Registrar Ext. P-6, Certificate to file the direct claim Ext. P-7. These documents are not very relevant to deal with the present controversy. The respondent on the other hand, has tendered on the record list of the workers of the University Ext. R-1, identity Cards issued after correction to the petitioner and others as Ext. R-2. Application form Ext. R-3, apology letter by the petitioner Ext. R-4, inspection note Ext. R-5, Decision of the Board of management Ext. R-6, Relieving orders of Security Guards dated 30.09.2018 Ext. R-7. It may be stated here that the relieving order issued in the year 2018 shows the status of the petitioner as Security Guard. When such is the position, it is not understood as to why the respondent has denied the status of the petitioner and three others as Security Guards. Ext. R-8 is copy of the complaint made to the police against the petitioner and others. Documents R-9 to R-11 pertains to one Pawan Kumar and are not relevant for the purpose of this case. Ext. R-12 is the envelope and Ext. R-13 is the relieving orders of the petitioner. Ext. R-14 is the extract of the saving account of the respondent. Ext. R-15 and Ext. R-16 are the documents showing the transfer of Rs. 10,940 and Rs. 2700/- in the account of the petitioner and others. Ext. P-17 and P-18 are the similar documents. Ext. P-19 to P-21 are other communications of like nature but not relevant to the present controversy. All the documents are not very material for the present controversy when it has been established on the record that there has been violation of Section 25-F of the Act in this case

17. The next question arises as to what relief the petitioner is entitled to? It is not the case of the petitioner that any fresh hand has been recruited after him or any junior was retained. Thus violation of Section 25 G and 25 H of the Act is not established in this case. The only violation of Section 25 F is established. Since no junior to the petitioner is proved to have been working and no fresh hand has been engaged after his termination, therefore, in case the services of the petitioner are re-engaged, the respondent shall still have the option to terminate his services by complying with the provisions of Section 25-F of the Act. In such a situation the order of re-engagement passed by the court shall become infructuous and therefore, the safe course in these facts and circumstances is to grant compensation in lieu of reinstatement. Taking into account the services length of the petitioner and the fact that he has been rendered jobless on account of abrupt

termination of his services by the respondent and he is still unemployed the ends of justice shall be met in this case if a sum of Rs.1,00,000/- is awarded to him as one time compensation payable by the respondent University. Since the petitioner has been rendered jobless after having put more than 10 years services with the respondent and therefore a sum of Rs.1,00,000/- shall not be excess amount payable as compensation, hence issues no.1 and 2 are decided accordingly.

Issues No. 3, 4, 5 and 6

18. In view of the aforesaid discussions on the issues no.1 and 2 the petition is maintainable, petitioner has the cause of action and locus standi as well and he has approached the court with clean hands, there can not be any estoppels against the petitioner as such plea is not available to the respondent in such like cases, hence all these issues are decided in negative.

RELIEF

19. In view of my discussion on the above issues, it is held that though there had been violation of Section 25-F of the Act, hence reinstatement and other consequential benefits cannot be granted in his favour but he is held entitled for compensation to the tune of □1,00,000/- (Rupees one lakh only), which would be paid within four months by the respondent and from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 6% per annum on the said amount from the date of award till the date of its realization. Parties are left to bear their costs.

20. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 3rd day of June, 2023.

Sd/-
(HANS RAJ),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-**INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No.	:	144/2019
Date of Institution	:	02-12-2019
Date of Decision	:	03-6-2023

Shri Ram Kumar s/o Shri Kamal Singh, r/o VPO Bathu, Tehsil Haroli, District Una, H.P.
. .*Petitioner.*

Versus

The Registrar, Indus International University Bathu, Tehsil Haroli, District Una, H.P.
. .*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the petitioner : Sh. V.K. Vashistha, Ld. Adv.

For the respondent : Sh. Ankush Kumar, Ld. Adv. (Vice)

AWARD

The petitioner has filed this direct claim under Section 2-A Sub Section (2) & (3) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) against respondent.

2. The case of the petitioner as made out from petition is that he was engaged as security guard by the respondent on monthly wages of Rs. 3500/- and this fact is evident from salary slip and statement of account placed on the record. The petitioner joined his duties as Security Guard on 1.5.2010. No formal appointment letter was given to him though identity card was issued in his favour. The petitioner worked till 1.10.2018 as a Security Guard without any break and completed 240 days in each calendar year. He discharged his duties with full devotion and sincerity. The respondent did not increase his salary despite requests. ESI facility and other benefits were not provided to him. He therefore, made complaints regarding the same to Higher Authorities. His services were terminated by oral order on 1.10.2018 without explaining the reasons. The petitioner raised the demand before the labour office in which conciliation proceedings were initiated but respondent refused to re-engage the petitioner and therefore, the Labour-cum-Conciliation Officer gave permission to approach the court by way of direct reference. The case of the petitioner is thus is to the effect that there has been violation of Section 25-F of the Act and principle of 'last come first go' was also not followed by the respondent, and therefore, he was entitled for the relief of re-engagement, continuity in service, seniority with full back wages along with interest and litigation costs.

3. The respondent has resisted and contested the petition on the plea of maintainability, cause of action, locus standi, estoppel etc. On merits, the respondent has explained that petitioner was engaged to watch the construction material during the construction of the University building. He was assigned the duty of Guard but he failed to discharge the same. The petitioner use to proclaim himself as a security Guard but he did not possess essential qualification and skill for the same. After the construction of the building was over, the University did not turn the respondent out of the job. It was by mistake that identity card showing him as a Security Guard was issued to the petitioner, which was later on withdrawn as the petitioner did not fulfill the qualification, training and skill required for the post of Security Guard. The petitioner used to create indiscipline in the University by joining the company of three like minded people and he has never performed the duty assigned to him in desired manner. He was found absent on surprise checks. Several oral and written warnings were given to him and the explanations were called. The petitioner was given an opportunity to mend his behaviour but in vain and taking into account this situation, it was decided by the board of management that the Security Guards for the security of the University be requisition from outsourcing agencies. When petitioner was asked to join the duties through outsource agency he refused to work. Other allegations are denied and it is submitted that several letters were sent on the address of the petitioner but same were not received or replied by him. It is prayed that the petitioner has no case, and therefore, the claim be dismissed.

4. The petitioner has filed rejoinder and reaffirmed the averments so made in the petition and denied those made in the reply.

5. From the pleadings of the parties and language of the reference, following issues were framed for determination on 30.7.2021:—

1. Whether the termination of services of the petitioner by the respondent w.e.f. 01-10-2018 is/was illegal and unjustifiable as alleged? . .*OPP.*

2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . .*OPP.*

3. Whether the claim petition is not maintainable, as alleged? . .*OPR.*

4. Whether the petitioner has no locus standi and cause of action to file the present petition, as alleged? . .*OPR.*

5. Whether the petitioner has not come to the court with clean hands and has suppressed the material facts, as alleged? . .*OPR.*

6. Whether the petitioner is estopped to file the present claim by his act and conduct, as alleged? . .*OPR.*

Relief

6. I have heard learned Counsel for the parties at length and considered the material on record.

7. For the reasons recorded hereinafter, the findings of this Court on the above issues are as under:—

Issue No.1	:	Decided accordingly
Issue No. 2	:	Decided accordingly
Issue No. 3	:	No
Issue No. 4	:	No
Issue No. 5	:	No
Issue No. 6	:	No
Relief	:	Petition is **partly allowed** awarding lump sum compensation of Rs.1,00,000/- per operative portion of the Award

REASONS FOR FINDINGS

Issues No.1 & 2 :

8. Both these issues are taken firstly for the sake of convenience as both of them are inter-connected.

9. Both the parties have raised factual dispute in this case which requires adjudication with the assistance of evidence led by them. The pleadings are foundation of the case, and therefore, are very material for the just decision of the case. The petitioner has claimed that he was engaged as Security Guard on monthly wages of Rs. 3500/- on 1.5.2010. The respondent, on the

other hand, has not denied this fact but pleaded that infact the construction work of the building of the University was going on, therefore, the petitioner was engaged as night guard to look after the construction material. No appointment letter was ever issued in favour of the petitioner and no terms and conditions were settled. No such document has been placed on the record. When the respondent, who is the employer, has not executed any document with the petitioner, the employer can not be permitted to lead oral evidence about the status of the petitioner. Had the respondent settled the terms and conditions of the employment in writing with the petitioner, those documents could have been easily filed and proved on the record for the perusal of this court. When no such terms and conditions are settled, the plea as taken by the petitioner can not disbelieved particularly when the petitioner has made the statement on oath and successfully withstood the test of cross-examination. It is proved from the statement of the petitioner that his services were engaged as Security Guard by the respondent.

10. The reply filed by the respondent also shows that the status of the petitioner has not been seriously disputed. It has been pleaded in para no.3 of the reply that once the construction work of the building was complete the petitioner was not turned out of the job. Even if this plea of the respondent is accepted as correct, it is well understood that after the construction of the building was over no other work rather than that of the Security Guard was taken from the petitioner. It is not the pleaded case of the respondent that some other work was assigned to the petitioner after the construction of the building was completed. The respondent has further taken a very unusual plea to the effect that by mistake identity card of Security Guard was issued to the petitioner which was later on withdrawn. Once the respondent has not specifically pleaded as to which work was assigned to the petitioner after the work of the building was complete, the respondent can not take the plea that identity card of Security Guard was issued in his favour by mistake. The respondent is absolutely silent on the aspect as to which work was assigned to the petitioner after the construction work of the building was over. Had the respondent specifically pleaded that some other work was assigned to the petitioner after the construction was complete, then the court could have considered the plea of the respondent to the effect that by mistake the identity card of the Security Guard was issued in favour of the petitioner. When no such plea has been taken by the respondent, the plea of mistaken Identity Card does not withstand the test of truthfulness.

11. The case of the respondent is fully exposed from the contents of the reply filed on the record. The respondent has pleaded that the petitioner did not possess the qualification/training and skill of Security Guard. The respondent has nowhere placed on record any document showing the essential qualifications for the post of a Security Guard. In case, the petitioner was not engaged as a Security Guard then it was for the respondent to plead and proved as to what was the specific work being taken from him when the work of the building was completed long back and the petitioner remained in the service till the year 2018.

12. The unreasonableness of the case of the respondent is further exposed from the contents of the reply so filed. It is pleaded that in the year 2018 it was decided that the work of the Security Guards shall be given to external agency on outsource basis and the petitioner was asked to work through outsource agency. On one hand, the respondent claims that the petitioner did not possess the requisite qualification for the post of Security Guard and, on the other hand, the respondent pleads that it was decided to employ the Security Guards through outsource agency and petitioner was asked to work through outsourcing agency. In case, the petitioner was not qualified for being engaged as a Security Guard then how he could have worked through outsource agency as Security Guard? The respondent has pleaded that one Shri Pawan Kumar had joined as Security Guard through outsource agency but he gave up the work at the later stage. The question that arises for consideration is that when Shri Pawan Kumar also did not possess the requisite qualification for being engaged as Security Guard, then how his services were hired from outsource agency. The respondent can not be permitted to blow hot and cold in the same breath. It is proved from the

statement of the petitioner recorded in the shape of affidavit Ext.PW1/A that he was engaged as a Security Guard by the respondent. It is for the reason that the identity cards were issued in the name of the petitioner. The identity card has been tendered on record as Ext. P7 and P8. How the identity card could be issued in favour of the petitioner by mistake when he was not a Security Guard. This plea is false on the face of it and can not be accepted. The petitioner has tendered on record various documents and in his cross-examination he has specifically denied the suggestions to the contrary. There is nothing in the cross-examination of the petitioner which could be taken to establish that his services were not engaged as a Security Guard. The respondent has examined Dr. Palwinder Kumar as RW1 who has tendered some documents on the record. There is no plausible explanation on his part to prove that the petitioner was not working as Security Guard with the respondent. He has rather come up with the different case to the effect that the conduct of the petitioner was not appropriate during his duty time. Shri Rakesh Kumar has been examined as RW2 in the witness box who too is the employee of University. His affidavit also shows that the petitioner was not given the work of Security Guard. His statement also does not in any manner prove that the petitioner was not working as Security Guard with the respondent. The salary slip of the petitioner Ext.P2 to P6 also show that his designation has been shown as Security Guard. No pay slip has been placed on the record by the respondent for the period when the designation of the petitioner was changed as claimed by the University. The explanation of the petitioner called for by the respondent in the year 2018 is Ext. P-12. It also shows that his designation has been shown that of the Guard. Thus it shows then even in the year 2018 he was being treated as a Guard. Since there is no post of the Guard in the colleges and Universities without hostels as the work during the day time is done by the peon etc. and not by the Guards. Guards are engaged in those institution where hostel facilities available. Thus showing the status of the petitioner as Guard even in the year 2018 proves the case of the petitioner to the effect that his services were engaged by the respondent as Security Guard and he has worked in the same capacity till the date of his termination.

13. Since there is no dispute of the fact that petitioner has worked w.e.f. the year 2010 to 2018 in continuity therefore it is understood that he has worked for more than 240 days in 12 calendar months preceding his termination and therefore, his services could not have been terminated without complying with the provisions of Section 25-F of the Act. In case, the university has decided to engage Security Guards on outsource basis, the services of the petitioner could not have been ended in this manner. In case the services of the petitioner were to be terminated, it was the duty of the respondent to have complied with the provisions contained in Section 25-F of the Act. Either one month notice should have been issued or the payment in lieu of one month's salary should have been made. Apart from this, it was the duty of the respondent to have calculated the compensation as per provisions of Section 25-F of the Act which was not done in this case. The respondent has though come up with the plea that some cheques were sent in the name of the petitioner but he did not accept the same, but such practice will not serve the purpose as compensation was never calculated as was required for the purpose of Section 25-F of the Act. Thus the termination of the services of the petitioner is proved to have taken place in violation of Section 25-F of the Act.

14. The petitioner has further contended that principle of 'Last come First go' has been violated in this case. However no evidence led on this aspect by the petitioner. Infact it has come on the record that Four Security Guards were terminated on the same day and therefore, the question of senior and junior has not arisen at all. No workman/Security Guard has been named either in the pleadings or in the evidence who was junior to the petitioner and his services were not terminated. When such is the position, the case of the petitioner for violation of Section 25-G is not established.

15. The respondent has tried to make out a case against the petitioner by placing documents on the record to show that he was not working smoothly and was causing convenience in the hostel and other places in the University. Several show cause notices have been issued to the

petitioner. These allegations have no relevance in the present controversy and the respondent has not terminated the services of the petitioner on the ground that his misconduct was established. Neither any inquiry was conducted into the allegations nor there is report of inquiry officer showing that the petitioner was not fit to be retained on account of indiscipline on his part. It is also not the case of the respondent that the services of the petitioner were terminated as a mark of punishment for his misconduct. When such is the position, the documents filed on the record to show that petitioner was not behaving properly in the university are not relevant for the purpose of this case and nor any fact is established from these documents. These documents consist of reply Ext. P-10, additional reply Ext. P-13 and the alleged demand notice Ext. P-14.

16. The petitioner has filed several other documents on the record which are Ext.P9 is copy of complaint moved by him to various high authorities including the Hon'ble High Court of H.P. Ext. P10 is reply filed before Labour Officer Una by the university Ext.P11 is regarding the meeting convened by Labour Officer, Ext.P12 is a similar letter which is not very relevant for the present controversy. Ext. P13 is a letter moved to Labour Officer. Ext.P14 is formal notice. All the documents are also not material for the present controversy when it has been established on the record that there has been violation of Section 25-F of the Act in this case

17. The next question arises as to what relief the petitioner is entitled to. It is not the case of the petitioner that any fresh hand has been recruited after him or any junior was retained. Thus violation of Section 25 G and 25 H of the Act is not established in this case. The only violation of Section 25 F is established. Since no junior to the petitioner is proved to have been working and no fresh hand has been engaged after his termination, therefore, in case the services of the petitioner are re-engaged, the respondent shall still have the option to terminate his services by complying with the provisions of Section 25-F of the Act. In such a situation the order of re-engagement passed by the court shall become infructuous and therefore, the safe course in these facts and circumstances is to grant compensation in lieu of reinstatement. Taking into account the services length of the petitioner and the fact that he has rendered jobless on account of abrupt termination of his services by the respondent and he is still unemployed, the ends of justice met in this case a sum of Rs.1,00,000/- is awarded to him payable by the respondent University. The petitioner has been rendered jobless after having put more than 10 years services with the respondent and therefore a sum of Rs.1,00,000/- shall not be excess amount payable as compensation, hence issues no.1 and 2 are decided accordingly.

ISSUES No. 3, 4, 5 and 6

18. In view of the aforesaid discussions on the issues no.1 and 2 the petition is maintainable, petitioner has the cause of action and locus standi as well and he has approached the court with clean hands, there can not be any estoppels against the petitioner as such plea is not available to the respondent in such like cases, hence all these issues are decided in negative.

RELIEF

19. In view of my discussion on the above issues, it is held that though there had been violation of Section 25-F of the Act, hence reinstatement and other consequential benefits cannot be granted in his favour but he is held entitled for compensation to the tune of □1,00,000/- (Rupees one lakh only), which would be paid within four months by the respondent and from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 6% per annum on the said amount from the date of award till the date of its realization. Parties are left to bear their costs.

20. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 3rd day of June, 2023.

Sd/-
(HANS RAJ),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No.	:	143/2019
Date of Institution	:	02-12-2019
Date of Decision	:	03-6-2023

Shri Pawan Kumar s/o Shri Pritam Chand, r/o VPO Panjwar, Tehsil Haroli, District Una, H.P. . .*Petitioner.*

Versus

The Registrar, Indus International University Bathu, Tehsil Haroli, District Una, H.P.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the petitioner	:	Sh. V.K. Vashistha, Ld. Adv.
For the respondent	:	Sh. Ankush Kumar, Ld. Adv. (Vice)

AWARD

The petitioner has filed this direct claim under Section 2-A Sub Section (2) & (3) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) against respondent.

2. The case of the petitioner as made out from petition is that he was engaged as Security Guard by the respondent on monthly wages of Rs. 3500/- as is evident from salary slip and statement of account. The petitioner joined his duty as security guard on 15.7.2009. No formal appointment letter was given to him. Though identity card was issued in his favour. The petitioner worked till 1.10.2018 as Security Guard without any break and completed 240 days in each calendar year. He discharged his duties with full devotion and sincerity. The respondent did not increase his salary despite request and also did not provide him ESI facility and other benefits. He therefore, made complaints regarding the same to his superior officers. His services were terminated by oral order on 1.10.2018 without explaining the reasons. The petitioner raised the demand before the labour office in which conciliation proceedings were initiated but the respondent refused to re-engage the petitioner and therefore, the Labour-cum-Conciliation Officer gave him permission to file the direct claim. The case of the petitioner is thus is to the effect that there has been violation of Section 25-F of the Act and principle of 'Last come First go' was also not followed and therefore, he was entitled for re-engagement, continuity in service, seniority, full back wages along with interest and litigation costs.

3. The respondent has resisted and contested the petition on the plea of maintainability, cause of action, locus standi, estoppel etc. On merits, the respondent has explained that petitioner was engaged to look after the construction material during the construction of the University building. He was assigned the duties of Guard but he failed to discharge the same. The petitioner used to proclaim that he was a Security Guard but he did not possess essential qualification and skill for the post. After the construction of the building was over, the University did not turn the respondent out of the job. It was by mistake that Identity Card showing him as Security Guard was issued which was later on withdrawn as the petitioner did not fulfill the qualification, training and skill for the post of security guard. The petitioner used to create indiscipline in the university by joining three like-minded people and he has never performed the duty assigned to him. He was found drunk and sleeping several times during his duties on- surprise checking. Several oral and written warning explanation were called. The petitioner was to given opportunity to mend his behaviour but in vain and taking into account the prevailing circumstances, it was decided by the board of management that the Security Guards be requisition from outsource agency. When petitioner was asked to join the duty through outsource agency he initially agreed to join through contractor but later on he has abandoned the job. Other allegations are denied and it is submitted that several letters were sent on the address of the petitioner but same were not received or replied. It is prayed that the petitioner has no case therefore the claim be dismissed.

4. The petitioner has filed rejoinder and reaffirmed the averments so made in the petition and denied those made in the reply.

5. From the pleadings of the parties and language of the reference, following issues were framed for determination on 30.7.2021:—

1. Whether the termination of services of the petitioner by the respondent w.e.f. 01-10-2018 is/was illegal and unjustifiable as alleged? . .*OPP.*

2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . .*OPP.*

3. Whether the claim petition is not maintainable, as alleged? . .*OPR.*

4. Whether the petitioner has no locus standi and cause of action to file the present petition, as alleged? . .*OPR.*

5. Whether the petitioner has not come to the court with clean hands and has suppressed the material facts, as alleged? . .*OPR.*

6. Whether the petitioner is estopped to file the present claim by his act and conduct, as alleged? OPR

Relief.

6. I have heard learned Counsel for the parties at length and considered the material on record.

7. For the reasons recorded hereinafter, the findings of this Court on the above issues are as under:—

Issue No. 1 : Decided accordingly

Issue No. 2 : Decided accordingly

Issue No. 3	:	No
Issue No. 4	:	No
Issue No. 5	:	No
Issue No. 6	:	No
Relief	:	Petition is partly allowed awarding lump sum compensation of Rs.1,00,000/- per operative portion of the Award.

REASONS FOR FINDINGS

Issues No.1 & 2

8. Both these issues are taken firstly as the respondents have not only raised both these objection seriously, but have also pressed the same with all the seriousness.

9. Both the parties have raised factual dispute in this case which requires adjudication with the assistance of evidence led by them. The pleadings are foundation of the case, and therefore, are very material for the just decision of the case. The petitioner has claimed that he was engaged as Security Guard on monthly wages of Rs. 3500/- on 15.7.2009. The respondent, on the other hand, has not denied this fact specifically but pleaded that infact the construction work of the building of the University was going on, and therefore, the services of the petitioner were engaged as night guard to look after the construction material. No appointment letter was ever issued in favour of the petitioner and no terms and conditions were settled. No such document has been placed on the record. When the respondent, who is the employer, has not executed any document with the petitioner, the employer can not lead oral evidence about the status of the petitioner. Had the respondent settled the terms and conditions of the employment in writing with the petitioner, those documents could have been easily filed and proved on the record. When no such terms and conditions are settled, the plea taken by the petitioner can not disbelieved particularly when the petitioner has made the statement on oath and successfully withstood the test of cross-examination. It is, therefore, proved from the statement of the petitioner that the his services were engaged as Security Guard by the respondent in the manner as alleged.

10. The reply filed by the respondent also shows that the status of the petitioner has not been seriously disputed. It has been pleaded in para no.3 of the reply that once the construction work of the building was complete the petitioner was no turned out of the job. Even if this plea of the respondent is accepted as correct, it is well understood that after the construction of the building was over no other work rather than that of the Security Guard was taken from the petitioner. It is not the pleaded case of the respondent that some other work was assigned to the petitioner after the construction of the building was completed. The respondent has further taken a very unusual plea to the effect that by mistake Identity Card as Security Guard was issued to the petitioner which was later on withdrawn. Once the respondent has not specifically pleaded as to which work was assigned to the petitioner after the work of the building was completed, the respondent can not take the plea that Identity Card of Security Guard was issued in his favour by mistake. The respondent is absolutely silent on the aspect as to what was the nature of the work assigned to the petitioner after the construction work of the building was over. Had the respondent specifically pleaded that some other work was assigned to the petitioner after the construction was complete, then the court could have considered the plea of the respondent to the effect that by mistake the Identity Card as Security Guard was issued in favour of the petitioner. When no such plea has been taken by the respondent, the plea of mistaken Identity Card does not withstand the test of truthfulness.

11. The respondent is fully exposed from the contents of the reply filed on the record. The respondent has pleaded that the petitioner did not possess the qualification/training and skill required for the post of Security Guard. The respondent has nowhere placed on record any document showing the essential qualifications for a Security Guard. In case, the petitioner was not engaged as a Security Guard then it was for the respondent to plead and proved as to what was the specific nature of work being taken from him when the work of the building was completed long back and the petitioner remained in the service till the year 2018.

12. The unreasonableness of the case of the respondent is further exposed from the contents of the reply so filed. It is pleaded that in the year 2018 it was decided that the work of the Security Guards shall be given to external agency on outsource basis and the petitioner was asked to work through outsource agency. On one hand, the respondent claims that the petitioner did not possess the requisite qualification for the post of Security Guard and, on the other hand, the respondent pleads that it was decided to employ the Security Guards through outsource agency and petitioner was asked to work through outsourcing agency. The case of the respondent is further to the effect that the petitioner has joined the services through the agency but he later on abandoned the job. In case, the petitioner was not qualified for being engaged as Security Guard then how he could have worked through outsource agency as Security Guard? The question that arises for consideration is that when Shri Pawan Kumar the petitioner did not possess the requisite qualification for being engaged as Security Guard, then how his services were hired through outsource agency. The respondent can not be permitted to blow hot and cold in the same breath. It is proved from the statement of the petitioner recorded in the shape of affidavit Ext.PW1/A that he was engaged as a Security Guard by the respondent. It is for the reason that the Identity Cards were issued in his name. The Identity Card has been tendered on record as Ext. P-7 and P-8. How the Identity Card could be issued in favour of the petitioner by mistake when he was not a Security Guard. This plea is false on the face of it and can not be accepted. The petitioner has tendered on record various documents and in his cross-examination he has specifically denied the suggestions to the contrary. There is nothing in the cross-examination of the petitioner which could be taken to establish that his services were not engaged as a Security Guard. The respondent has examined Dr. Palwinder Kumar as RW1 who has tendered some documents on the record. There is no plausible explanation on his part to prove that the petitioner was not working as Security Guard with the respondent. He has rather come up with the different case to the effect that the conduct of the petitioner was not appropriate during his duty time. Shri Rakesh Kumar has been examined as RW2 in the witness box who too is the employee of University. His affidavit also shows that the petitioner was given the work of Security Guard. His statement also does not in any manner prove that the petitioner was not working as Security Guard with the respondent. The salary slip of the petitioner Ext.P2 and P3 also show that his designation has been shown as Security Guard. No pay slip has been placed legally proved on the record by the respondent for the period when the designation of the petitioner was changed as claimed by the University. The petitioner has tendered on the record complaint moved by him against his illegal termination as Ext. P-5. He has also tendered on the record notice received from the conciliation officer as Ext. P-6. These documents are formal in nature.

13. Since there is no dispute of the fact that petitioner has worked w.e.f. the year 2009 to 2018 in continuity therefore it is understood that he has worked for more than 240 days in 12 calendar months preceding his termination and therefore his services could not have been terminated without complying with the provisions of Section 25-F of the Act. In case the University has decided to engage Security Guards on outsource basis, the services of the petitioner could not have been ended in this manner. In case the services of the petitioner were to be terminated, it was the duty of the respondent to have complied with the provisions contained in Section 25-F of the Act. Either one month notice should have been issued or the payment in lieu of one month's salary should have been made. Apart from this, it was the duty of the respondent to have calculated the

compensation as per provisions of Section 25-F of the Act which was not done in this case. The respondent has though come up with the plea that some cheques were sent in the name of the petitioner but he did not accept the same but such practice will not serve the purpose as compensation was never calculated as was required for the purpose of Section 25-F of the Act. Thus the termination of the services of the petitioner in such an abrupt manner is in violation of Section 25-F of the Act.

14. The petitioner has further contended that principle of 'last come first go' as been violated in this case. However no evidence led on this aspect by the petitioner. Infact it has come on the record that four Security Guards were terminated on the same day and therefore, the question of senior and junior has not arisen at all. No workman/Security Guard has been named either in the pleadings or in the evidence who was junior to the petitioner and his services were not terminated. When such is the position it is the case of the petitioner for violation of Section 25-G is not established.

15. The respondent has tried to make out a case against the petitioner by placing documents on the record to show that he was not working smoothly and he causing his convenience in the hostel and other places in the university. Several show cause notices have been issued to the petitioner. These allegations have no relevance in the present controversy and the respondent has not terminated the services of the petitioner on the ground that his misconduct was established. Neither any inquiry was conducted into the allegations nor there is report of inquiry officer showing that the petitioner was not fit to be retain on account of indiscipline on his part. It is also not the case of the respondent that the services of the petitioner were terminated as a mark of punishment for his misconduct. When such is the position, the documents filed on the record to show that petitioner was not behaving properly in the university are not relevant for the purpose of this case and nor any fact is established from these documents.

16. The respondent has placed on record some documents which consist of the list of the workers of the respondent University as on 24.03.2018 Ext. R-1. The name of the petitioner has been shown in the same. Ext. R-2 are copies of the identity cards issued subsequently in the name of petitioner and others and their position has been shown as Guards in the Institution. It has not been clarified as to what is the difference between the Guards and the Security Guard. No document has been placed on the record to show the number and the designation of the posts available in the University. Had any such document been shown, the court would have examined the same to find out as to how many posts of Guards were available in the institution and what was the function of such guards. The court would have been also able to examine the difference between the duties of the Guards and the Security Guards. Even if the case of the respondent is accepted whole, even then the services of the Guards could not have been ended in the manner as has been done in the instant case, and therefore, the violation of section 25 F is established. Ext. R-3 is the application form of the petitioner, Ext. R-4 is the decision of the Board of management taken in January 2009 to outsource the services of Guards to external agencies. Ext. P-5 is the letter showing the fact that the petitioner and others were relieved from the University in September 2018. Ext. R-6 is the complaint moved to the police against the petitioner and others. Ext. R-7 is the application of the petitioner to join through outsource agency. This letter also can not legalize the unlawful termination. The respondent could not have compelled him to leave the job and apply through outsource agency. Such a compulsion also means illegal termination. Ext. R-8 to Ext. R-15 are also formal documents not very material for the present controversy. All the documents are also not material for the present controversy when it has been established on the record that there has been violation of Section 25-F of the Act in this case

17. The next question arises as to what relief the petitioner is entitled to. It is not the case of the petitioner that any fresh hand has been recruited after him or any junior was retained. Thus

violation of Section 25 G and 25 H of the Act is not established in this case. The only violation of Section 25 F is established. Since no junior to the petitioner is proved to have been working and no fresh hand has been engaged after his termination, therefore, in case the services of the petitioner are re-engaged, the respondent shall still have the option to terminate his services by complying with the provisions of Section 25-F of the Act. In such a situation the order of re-engagement passed by the court shall become infructuous and therefore, the safe course in these facts and circumstances is to grant compensation in lieu of reinstatement. Taking into account the services length of the petitioner and the fact that he has rendered jobless on account of abrupt termination of his services by the respondent and he is still unemployed, the ends of justice met in this case a sum of Rs.1,00,000/- is awarded to him payable by the respondent University the petitioner has been rendered jobless after having put more than 10 years services with the respondent and therefore a sum of Rs.1,00,000/- shall not be excess amount payable as compensation, hence issues no.1 and 2 are decided accordingly.

Issues No. 3, 4, 5 and 6

18. In view of the aforesaid discussions on the issues no.1 and 2 the petition is maintainable, petitioner has the cause of action and locus standi as well and he has approached the court with clean hands, there can not be any estoppels against the petitioner as such plea is not available to the respondent in such like cases, hence all these issues are decided in negative.

RELIEF

19. In view of my discussion on the above issues, it is held that though there had been violation of Section 25-F of the Act, hence reinstatement and other consequential benefits cannot be granted in his favour but he is held entitled for compensation to the tune of □1,00,000/- (Rupees one lakh only), which would be paid within four months by the respondent and from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 6% per annum on the said amount from the date of award till the date of its realization. Parties are left to bear their costs.

20. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 3rd day of June, 2023.

Sd/-
(HANS RAJ),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-**INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No.	:	142/2019
Date of Institution	:	02-12-2019
Date of Decision	:	03-6-2023

Shri Balbir Chand s/o Shri Daya Ram, r/o VPO Bathu, Tehsil Haroli, District Una, H.P.
. .*Petitioner.*

Versus

The Registrar, Indus International University Bathu, Tehsil Haroli, District Una, H.P.
. .*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the petitioner : Sh. V.K. Vashistha, Ld. Adv.

For the respondent : Sh. Ankush Kumar, Ld. Adv. (Vice)

AWARD

The petitioner has filed this direct claim under Section 2-A Sub Section (2) & (3) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) against respondent.

2. The case of the petitioner as made out from petition is that he was engaged as security Guard by the respondent on monthly wages of Rs. 3500/- as is evident from salary slip and statement of account. The petitioner joined his duty as security guard on 13.5.2010. No formal appointment letter was given to him, hough identity card was issued in his favour. The petitioner worked till 1.10.2018 as a Security Guard without any break and completed 240 days in each calendar year. He discharged his duties with full devotion and sincerity. The respondent did not increase his salary despite of his requests and also did not provide him ESI facility and other benefits. He therefore, made complaints regarding the same to superior officers. His services were terminated by oral order on 1.10.2018 without explaining the reasons. The petitioner raised the demand before the labour office in which conciliation proceedings were initiated but respondent refused to re-engage the petitioner and therefore, the Labour-cum-Conciliation Officer gave permission to the petitioner to approach directly to the court. The case of the petitioner is thus is to the effect that there has been violation of Section 25-F of the Act and Principle of 'Last come First go', and therefore the petitioner was entitled for re-engagement, continuity in service, seniority, full back wages along with interest and litigation costs.

3. The respondent has resisted and contested the petition on the plea of maintainability, cause of action, locus standi, estoppel etc. On merits, the respondent has explained that petitioner was engaged to watch the construction material during the construction of the University building. He was assigned the duties of Guard but he failed to discharge the same. The petitioner used to proclaim that he was a Security Guard, whereas, he did not possess essential qualification and skill for the post. After the construction of the building was over the University did not turn the respondent out of the job. It was by mistake that identity card showing him as Security Guard was issued to the petitioner which was later on withdrawn as the petitioner did not fulfill the qualification for the post and was not trained and skilled for the post of Security Guard. The petitioner used to create indiscipline in the University by joining the company of three like minded people and he has never performed the duty assigned to him. He was found drunk and sleeping during the surprise checking. Several oral and written warning/explanation were called. The petitioner was given ample opportunity to mend his behaviour but in vain. Taking into account the fuss created by the petitioner and others, it was decided by the board of management that the Security Guards be requisitioned from outsource agencies. When petitioner was asked to join the duties through outsource agency he refused to work. Other allegations are denied and it is submitted that several letters were sent on the address of the petitioner but same were not received

or replied. It is prayed that the petitioner has no case for the relief claimed, and therefore, the claim be dismissed.

4. The petitioner has filed rejoinder and reaffirmed the averments so made in the petition and denied those made in the reply.

5. From the pleadings of the parties and language of the reference, following issues were framed for determination on 30.7.2021:—

1. Whether the termination of services of the petitioner by the respondent w.e.f. 01-10-2018 is/was illegal and unjustifiable as alleged? . .*OPP.*

2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . .*OPP.*

3. Whether the claim petition is not maintainable, as alleged? . .*OPR.*

4. Whether the petitioner has no locus standi and cause of action to file the present petition, as alleged? . .*OPR* .

5. Whether the petitioner has not come to the court with clean hands and has suppressed the material facts, as alleged? . .*OPR.*

6. Whether the petitioner is estopped to file the present claim by his act and conduct, as alleged? . .*OPR.*

Relief.

6. I have heard learned Counsel for the parties at length and considered the material on record.

7. For the reasons recorded hereinafter, the findings of this Court on the above issues are as under:—

Issue No. 1	:	Decided accordingly
Issue No. 2	:	Decided accordingly
Issue No. 3	:	No
Issue No. 4	:	No
Issue No. 5	:	No
Issue No. 6	:	No
Relief	:	Petition is partly allowed awarding lump sum compensation of Rs.1,00,000/- per operative portion of the Award.

REASONS FOR FINDINGS

Issues No.1 & 2

8. Both these issues are taken firstly for the sake of convenience.

9. Both the parties have raised factual dispute in this case which requires adjudication with the assistance of evidence led by them. The pleadings are foundation of the case, and therefore, are very material for the just decision of the case. The petitioner has claimed that he was engaged as Security Guard on monthly wages of Rs. 3500/- on 13.5.2010. The respondent, on the other hand, has not denied this fact but pleaded that infact the construction work of the building of the University was going on, therefore, the petitioner was engaged as night guard to look after the construction material. No appointment letter was ever issued in favour of the petitioner and no terms and conditions were settled. No such document has been placed on the record. When the respondent, who is the employer, has not executed any document with the petitioner, the employer can not lead oral evidence about the status of the petitioner. Had the respondent settled the terms and conditions of the employment in writing with the petitioner, those documents could have been easily filed and proved on the record. When no such terms and conditions are settled, the plea as taken by the petitioner can not disbelieved particularly when the petitioner has made the statement on oath and successfully withstood the test of cross-examination. It is proved from the statement of the petitioner that the his services were engaged as Security Guard by the respondent.

10. The reply filed by the respondent also shows that the status of the petitioner has not been seriously disputed. It has been pleaded in para no.3 of the reply that once the construction work of the building was complete the petitioner was not turned out of the job. Even if this plea of the respondent is accepted as correct, it is well understood that after the construction of the building was over no other work rather than that of the Security Guard was taken from the petitioner. It is not the pleaded case of the respondent that some other work was assigned to the petitioner after the construction of the building was completed. The respondent has further taken a very unusual plea to the effect that by mistake Identity Card of Security Guard was issued to the petitioner which was later on withdrawn. Once the respondent has not specifically pleaded as to which work was assigned to the petitioner after the work of the building was complete, the respondent can not be heard taking the plea that Identity Card of Security Guard was issued in his favour of the petitioner by mistake. The respondent is absolutely silent on the aspect as to which work was assigned to the petitioner after the construction work of the building was over. Had the respondent specifically pleaded that some other work was assigned to the petitioner after the construction was complete, then the court could have considered the plea of the respondent to the effect that by mistake the identity card of the security Guard was issued in favour of the petitioner. When no such plea has been taken by the respondent, the plea of mistaken identity card does not with stand the test of truthfulness.

11. The respondent is fully exposed from the contents of the reply filed on the record. The respondent has pleaded that the petitioner did not possess the qualification/training and skill of Security Guard. The respondent has nowhere placed on record any document showing the essential qualifications for a Security Guard. In case the petitioner was not engaged as a Security Guard then it was for the respondent to plead and proved as to what was the specific work being taken from him when the work of the building was completed long back and the petitioner remained in the service till the year 2018.

12. The unreasonableness of the case of the respondent is further exposed from the contents of the reply so filed. It is pleaded that in the year 2018 it was decided that the work of the Security Guards shall be given to some external agency on outsource basis and the petitioner was asked to work through outsource agency. On one hand, the respondent claims that the petitioner did not possess the requisite qualification for the post of Security Guard and, on the other hand, the respondent pleads that it was decided to employ the Security Guards through outsource agency and petitioner was asked to work through outsourcing agency. In case, the petitioner was not qualified

for being engaged as Security Guard then how he could have worked through outsource agency as Security Guard? The respondent has pleaded that one Shri Pawan Kumar had joined as Security Guard through outsource agency but he gave up the work at the later stage. The question that arises for consideration is that when Shri Pawan Kumar also did not possess the requisite qualification for being engaged as Security Guard, then how his services were hired from outsource agency. The respondent can not be permitted to blow hot and cold in the same breath. It is proved from the statement of the petitioner recorded in the shape of affidavit Ext.PW1/A that he was engaged as a Security Guard by the respondent. It is for the reason that the identity cards were issued in the name of the petitioner. The identity card has been tendered on record as Ext. P-2, P-3, P-5 and P-6. How the identity card could be issued in favour of the petitioner by mistake when he was not a Security Guard. This plea is false on the face of it and can not be accepted. The petitioner has tendered on record various documents and in his cross-examination he has specifically denied the suggestions to the contrary. There is nothing in the cross-examination of the petitioner which could be taken to establish that his services were not engaged as a Security Guard. The respondent has examined Dr. Palwinder Kumar as RW1 who has tendered some documents on the record. There is no plausible explanation on his part to prove that the petitioner was not working as Security Guard with the respondent. He has rather come up with the different case to the effect that the conduct of the petitioner was not appropriate during his duty time. Shri Rakesh Kumar has been examined as RW2 in the witness box who too is the employee of University. His affidavit also shows that the petitioner was given the work of Security Guard. His statement also does not in any manner prove that the petitioner was not working as Security Guard with the respondent. He has even admitted that the petitioner has performed his duties on the ATM machine installed in the University. The salary slip of the petitioner Ext.P2 to P4 also show that his designation has been shown as Security Guard. No pay slip has been placed on the record by the respondent for the period when the designation of the petitioner was changed as claimed by the University.

13. Since there is no dispute of the fact that petitioner has worked w.e.f. the year 2010 to 2018 in continuity therefore, it is well understood that he has worked for more than 240 days in 12 calendar months preceding his termination and therefore, his services could not have been terminated without complying with the provisions of Section 25-F of the Act. In case, the University has decided to engage Security Guards on outsource basis, the services of the petitioner could not have been ended in this manner. In case the services of the petitioner were to be terminated, it was the duty of the respondent to have complied with the provisions contained in Section 25-F of the Act. Either one month notice should have been issued or the payment in lieu of one month's salary should have been made. Apart from this, it was the duty of the respondent to have calculated the compensation as per provisions of Section 25-F of the Act which was not done in this case. The respondent has though come up with the plea that some cheques were sent in the name of the petitioner but he did not accept the same but such practice will not serve the purpose as compensation was never calculated as was required for the purpose of Section 25-F of the Act thus the termination of the services of the petitioner were abruptly as was in violation of Section 25-F of the Act.

14. The petitioner has further contended that principle of 'Last come First go' was violated in this case. However, no evidence led on this aspect by the petitioner. Infact it has come on the record that four security guards were terminated on the same day and therefore, the question of senior and junior has not arisen at all. No workman/security guard has been named either in the pleadings or in the evidence who was junior to the petitioner and his services were not terminated. When such is the position it is the case of the petitioner for violation of Section 25-G is not established.

15. The respondent has tried to make out a case against the petitioner by placing documents on the record to show that he was not working smoothly and he causing his convenience

in the hostel and other places in the university. Several show cause notices have been issued to the petitioner. These allegations have no relevance in the present controversy and the respondent has not terminated the services of the petitioner on the ground that his misconduct was established. Neither any inquiry was conducted into the allegations nor there is report of inquiry officer showing that the petitioner was not fit to retain on account of indiscipline on his part. It is also not the case of the respondent that the services of the petitioner were terminated for the mark of punishment for his misconduct. When such is the position the documents filed on the record to show that petitioner was not behaving properly in the university are not relevant for the purpose of this case and nor any fact is established from these documents.

16. The petitioner has filed several other documents on the record which are Ext.P7 copy of the notice received by him during the conciliation proceedings. Ext. P-8 is the demand notice raised by the petitioner to the respondent University. Ext. P-9 is the certificate issued in favour of the petitioner permitting him to file the direct claim. All the documents are not material for the present controversy when it has been established on the record that there has been violation of Section 25-F of the Act in this case. The respondent has also placed on the record some documents consisting of list of the workers of the University as it stood in the year 2018 as Ext. R-1, application form of the petitioner as Ext. R-2, copy of the decision of the Board of management Ext. R-3, relieving letter of the petitioner and others Ext. R-4. Complaint made to the police Ext. R-5, application of Sh. Pawan Kumar Ext. R-6 and the copy of the relieving order Ext. R-7. Returned registered envelop has been tendered as Ext. R-8 . Extract of the account of the respondent in the bank Ext. R-9. Ext. R-10 and Ext. R-11 are the documents showing the transfer of Rs. 10,940 and Rs. 2700/- in the account of the petitioner and others. Ext. P-12 is also a similar documents but not very relevant to the present controversy

17. The next question arises as to what relief the petitioner is entitled to. It is not the case of the petitioner that any fresh hand has been recruited after him or any junior was retained. Thus violation of Section 25 G and 25 H of the Act is not established in this case. The only violation of Section 25 F is established. Since no junior to the petitioner is proved to have been working and no fresh hand has been engaged after his termination, therefore, in case the services of the petitioner are re-engaged, the respondent shall still have the option to terminate his services by complying with the provisions of Section 25-F of the Act. In such a situation the order of re-engagement passed by the court shall become infructuous and therefore, the safe course in these facts and circumstances is to grant compensation in lieu of reinstatement. Taking into account the services length of the petitioner and the fact that he has rendered jobless on account of abrupt termination of his services by the respondent and he is still unemployed the ends of justice met in this case a sum of Rs.1,00,000/- is awarded to him payable by the respondent University. The petitioner has been rendered jobless after having put more than 10 years services with the respondent and therefore, a sum of Rs.1,00,000/- shall not be excess amount payable as compensation, hence issues no.1 and 2 are decided accordingly.

Issues No. 3, 4, 5 and 6

18. In view of the aforesaid discussions on the issues no.1 and 2 the petition is maintainable, petitioner has the cause of action and locus standi as well and he has approached the court with clean hands, there can not be any estoppels against the petitioner as such plea is not available to the respondent in such like cases, hence all these issues are decided in negative.

RELIEF

19. In view of my discussion on the above issues, it is held that though there had been violation of Section 25-F of the Act, hence reinstatement and other consequential benefits cannot

be granted in his favour but he is held entitled for compensation to the tune of □1,00,000/- (Rupees one lakh only), which would be paid within four months by the respondent and from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 6% per annum on the said amount from the date of award till the date of its realization. Parties are left to bear their costs.

20. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 3rd day of June, 2023.

Sd/-
(HANS RAJ),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-**INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No.	:	269/2015
Date of Institution	:	8-7-2015
Date of Decision	:	05-6-2023

Shri Jagdish Kumar s/o Shri Paramdev, r/o Village Thatta, P.O. Deori, Tehsil Sadar, District Mandi, H.P. . .*Petitioner.*

Versus

The Divisional Forest Officer, Mandi Forest Division, District Mandi, H.P.
. .*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the petitioner	:	Sh. Rajat Chaudhary, Ld. Adv.
For the respondent	:	Sh. Anil Sharma, Ld. Dy. D.A.

AWARD

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short).

"Whether time to time termination of the services of Shri Jagdish Kumar s/o Shri Paramdev, r/o Village Thatta, P.O. Deori, Tehsil Sadar, District Mandi, H.P. during

October, 1999 to March, 2010 and finally during April, 2010 by the Divisional Forest Officer, Mandi Forest Division, Mandi, H.P., without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. The case of the petitioner as made out from the claim is to the effect that he was engaged as daily wage beldar in forest department in the year 1997 and worked till March 2010 when his services were terminated verbally. Workmen junior to him were retained and most of them have been regularized. The petitioner used to request the respondent to give him sufficient work but he was given work either for a month or two every year, and was thus subjected to unfair labour practices. His seniority was disturbed by fictional breaks, hence, the respondent not only violated the provisions contained in Section 25-F but also in violation of Sections 25-G and 25-H of the Act. On these averments, the petitioner has submitted that his services be ordered to be reinstated and the fictional breaks be condoned and counted towards his seniority and length of his services. He has also claimed back wages and compensation from the respondent.

3. The respondent has resisted and contested the claim on the plea that petitioner was engaged as casual labourer in the year 1999 to carry out the seasonal forestry works and he worked intermittently upto 2010. After 2010, he stopped he did not report to the work and thus no work could be given to him. It is submitted that neither workmen junior to him were retained nor any fresh hand was engaged. The petitioner has not worked even for a single day in the years 2000, 2002 and 2005 and his services were engaged during a particular season and ended at the end of the season with his consent, hence, his case can not be treated at parity with others who were daily wagers. Other allegations are denied and it is submitted that his claim is without any merits and same be dismissed.

4. The petitioner has filed rejoinder and reaffirmed the averments so made in the petition and denied those made in the reply.

5. From the pleadings of the parties and material available on the records, following issues were framed for determination on 24.2.2016:—

1. Whether time to time termination of the services of petitioner during October, 1999 to March, 2010 by the respondent is illegal and unjustified as alleged? . .*OPP.*

2. Whether final termination of services of the petitioner by the respondent during April, 2010 is illegal and unjustified as alleged? . .*OPP.*

3. If issue no.1 or issue no.2 are proved in affirmative to what relief the petitioner is entitled to? . .*OPP.*

4. Whether the present claim petition/reference is not maintainable in the present form as alleged? . .*OPR.*

5. Relief

6. I have heard learned Counsels for the parties at length and considered the material on record.

7. For the reasons recorded hereinafter, the findings of this Court on the above issues are as under:—

Issue No.1	:	Negative
Issue No.2	:	Negative
Issue No.3	:	Negative
Issue No.4	:	No
Relief	:	Petition is **dismissed** per operative portion of the Award.

REASONS FOR FINDINGS

Issues No.1 to 4

8. All these issues being interlinked and interconnected are taken up together for determination for the sake of evidence.

9. The learned counsel for the petitioner has argued that the mandays chart proved on the record as Ext.PW1/C shows that petitioner was given work for few days every year and thus unfair labour practices is established as workmen junior to him shown in the seniority list Ext.RW1/B were given work for full time and they were also regularized with the passage of time. It is submitted that there is no explanation on the record as to why the petitioner was not given work for the whole year like others, hence the fictional breaks are involuntarily in nature. The learned Dy. District Attorney, on the other hand, has argued that the petitioner was a seasonal worker and his work was seasonal in nature which would end with the season and he can not claim any parity with other daily wager worker. He has further argued that petitioner has approached the court very late and the delay is fatal in this case hence, the alleged fictional breaks can not be condoned as it will work injustice to other workers who had been regular and punctual.

10. The mandays chart of the petitioner is a very important document and when this mandays chart is examined along-with the averments made in the claim, many things become clear. As per the mandays chart, the petitioner has not worked for a single day in the years 2000, 2002 and 2005. In the year 1999, the petitioner has worked only for 19 days in the month of October, 1999 and 30 days in the month of November. He has worked for 49 days in the year 2000. Petitioner has not worked even for a single day in the year 2001. He has worked in February and March only for 42 days, in the year 2002. In the year 2003 he has worked only for 30 days in December. Then in May 2004 he worked for another 30 days. In the year 2005 he did not work even for a single day. In the year 2006 he worked for 59 days and in the year 2007 he worked only for 7 days in January. In the year 2008 he worked for 31 days in January and in February, 2009 he worked for 17 days on muster roll and thereafter entire work was done by him on bill basis as in the year 2009 the department has started following a notification of State Government whereby all the departments were directed to get the work on patty nature conducted through bills on approved rates by Government of H.P. The petitioner has worked in the year 2012, 2013 and 2014 and 2015 but on bill basis. In the reference the date of termination has been shown as March, 2010. As per the mandays chart petitioner has worked for 26 days in the year 2010 but on bill basis.

11. Fictional breaks if understood in simple language are those breaks which the employer gives to his employee within the period of 12 calendar months so that the workman is not able to take benefits of Section 25-F of the Act, in case, the employer intends to dispense with his services. Fictional breaks are thus for a smaller period and the main purpose of such fictional breaks is to ensure that the workman is not able to get the work for minimum 240 days in any calendar year. In

case a workman remains absent for a period for full year or more such absence is not a fictional breaks but such absence either means termination of his services or absence on the part of the workman. In case, the workman is able to establish that his absence was for the reason that he was not allowed to work by the employer then it amounts to termination. In case, it is proved that the petitioner used to remain absent and then it is period of absence and not the fictional breaks. Fictional breaks generally are given within a time span of 12 months solely for the reason that such workman should not complete 240 days within a time span of 12 months. In the case in hand, the petitioner has remained absent for the work for years together and he can not claim that fictional breaks were given to him. Such a long absence can be termed as termination, even if the case of the petitioner is admitted as it is. Thus it can be said at the most that the petitioner worked in October and November 1999 for 49 days and thereafter his services were terminated in the year 1999 itself and he worked not even a single day in the year 2000. He was then re-engaged in the year 2001. Thus there is a break of around 14 months in between. The petitioner worked in February and March 2001 only for 42 days and his services were again terminated. He did not work even for a day in the remaining 9 months of the year 2001 and for all the 12 months of 2002. He also did not work for the next 11 months of the year 2003. He worked only for 30 days in December 2003. Thus the service break of the petitioner in between March 2001 to December 2003 is that of 31 months, i.e. five months short of three years. The petitioner worked for 30 days in the month of May 2004 and thereafter there is a break of around 21 months in between. The petitioner resumed the work in February 2006 only and worked for total 59 days in the months of February, March and October 2006 In the year 2007, the petitioner worked only for seven days. Thus it is evident from the perusal of the mandays chart that the petitioner has remained without work for years together.

12. The case of the respondent is to the effect that petitioner was given a specified work in a particular season and thereafter work would come to an end at the end of the season and there was no parity between him and other daily wages. In the aforesaid background the petitioner claims that other similar situated workmen were given work for the whole year and they were regularized with the passage of time. In case, the work was given to other workmen for whole of the year and the petitioner was given breaks for 14 months, 31 months and 21 months as already explained hereinabove, the petitioner could not have chosen to sit idle. He was duty bound to have raised his demand then and there. The petitioner did not raise demand in between 1999 to 2010. Had the services of the petitioner been terminated from time to time he would have raised demand at earliest and there was no reason for him to wait for 9 to 10 years when he knew fully that similar situated workmen were given work for whole of the year and most of them were regularized. Regularization is an important event in the life of a daily paid worker and even a semi-literate or illiterate workman also know the value of this important and valuable right of regularization. In this case, when the services of the petitioner were terminated and he was not given the work for 14, 31 and 21 months respectively 1999 to 2006 and rest of the workmen who were junior to him were employed throughout, the petitioner should not have remained idle and slept over his rights, but it was for him to agitate the matter at earliest. When workmen junior to him were regularized as has been pleaded in para no.2 of the claim, the petitioner was duty bound to have raised the demand then and there get the matter resolved through the award of the court. The petitioner did nothing and kept silent and after a period of 10 years he realized suddenly that he was given fictional breaks and subjected to time to time termination and thus he raised the demand. The action of the petitioner is highly belated and, in case, the alleged fictional breaks are condoned by passing the Award in his favour, he will get seniority and continuity for last 10 years and he will be rewarded for the absences on his part. In this situation, he will be placed in seniority over and above those workmen, who had worked throughout and earned the regularization by dint of their hard-work and continuity. This is not the intention of the beneficial legislation. Undue sympathy can not replace the concept of beneficial legislation. The petitioner has worked for nominal number of days in rest of the year in between 1999 to 2010 and the maximum number of his working days is 59 in the year 2006 had he worked for more than 240 days in the rest of the years, the court could have taken into

account this fact and believed his version to he effect that he was given fictional breaks in three years i.e. 2000, 2002 and 2005 and he has worked for considerable number of days for the rest of the years.

13. The petitioner appeared as PW1 in the witness box and denied in his cross-examination that he has not worked for a single day in the years 2000, 2002 and 2005, whereas, the documents speak otherwise. He has denied that he used to work during the fire season, plantation season. Had the petitioner not consented to perform the seasonal work, he would have never sit idle for many years when he knew that workmen junior to him were still working. The petitioner has remained silent and slept over his rights for period of around 10 years and raised the demand when he felt that his services could be also regularized like others, who have worked in continuity. The respondent on the other hand examined Shri Vasu Doegar as RW1 and he has tendered on record his affidavit Ext.RW1/A, seniority list Ext.RW1/B and mandays chart Ext.RW1/C. He was subjected to cross-examination and he stated time and again that petitioner was engaged as a casual labourer not on daily wager. He admitted that no inquiry was conducted into the reasons of absence of the petitioner. It is true that the plea of abandonment can not succeed until the employer takes all the steps to call back the workman but it depends upon the facts of case to case. In case, a workman abandoned the work after he has already worked for 240 days in continuity in the span of 12 calendar months he certainly has a valuable right in his favour to be not thrown out of the work without complying with the provisions of Section 25-F of the Act. In case, such workman absents himself then it is duty of the employer to call him back by issuing notice to him and inform him about his right valuable right of being subjected to the rule of first come last go. In case, a workman leaves the work within a span of 30 day or less than that, and no junior is engaged within this short period, the employer is not duty bound to call for such a workman as the principle of First come Last go does not come in picture at all. The petitioner in this case, as aforesaid, did not raise his voice for 10 years and worked for minimum possible days in few year ranging in between 59 to 7 days,, he can not be given the entire benefits i.e. back wages, seniority and continuity and regularization etc. in the name of time to time termination when he himself slept over his rights for such a long period.

14. Taking into aforesaid discussion the petitioner has failed to make out a case for condonation of long breaks that have occasioned in between as the petitioner has not taken any steps to raise the matter by way of demand notice at earliest. Moreover, the respondent has come up with the plea that petitioner was only a seasonal worker and the employment used to come to an end at the end of the season. There is truth in the plea of the respondent and for these reason the petitioner has also not raised the issue by raising demand as he himself knew that his work was co-terminus with the particular season. Had the petitioner been not a casual worker, then he would have raised demand at earliest when he knew that workmen junior to him were given the work throughout worked and they were regularized with the passage of time. The conduct of the petitioner also strengthens the case of the respondent.

15. Thus aforesaid reasons the petitioner has failed to make out a case for condonation of time to time termination right from the year 1999 to the year 2010 which has prolonged for more than one year many times and the petitioner has remained silent and not agitate the matter at the earliest. So far as the plea of petitioner regarding final termination is concerned, the petitioner is not entitled for the relief of reinstatement or compensation for the simple reason that when time to time termination is not condoned then the number of working days can not be joined together. The petitioner has worked only 31 days in January 2008 and after a gap of 13 months for 17 days in February 2009 on muster roll in the year 2009. These days do not make the number of days 240 in the preceding twelve calendar months so as to attract the compliance of Section 25-F of the Act. He has worked only for14 days in the year 2010 and that too on bill basis. Since the fictional breaks have not been condoned every new joining of the petitioner has to be treated as fresh engagement.

It is not the case of the petitioner that any junior was engaged in the year 2008 or 2009 to him and the junior workman was retained. It is also not established that any fresh hand was engaged in the year 2009 and 2010 without giving preference to the petitioner. Thus the violation of section 25 G or 25 H is also not established on the record. The seniority lists tendered on the record as Ext. RW1/B shows that some of the daily wage workers have worked for more than 240 days and they continued to work and were regularized. Once it has been proved that the petitioner did not raise his voice at all, therefore, he is not entitled for any parity with them. Hence, for the aforesaid discussion, issues no.1 to 3 are held in negative. So far as the issue of maintainability claim is concerned, it is held that the claim is maintainable as it has been filed in support of the reference but it is different matter that the petitioner has failed to establish the claim, hence this issue is held in favour of the petitioner.

RELIEF

16. In view of my above discussions, the present claim petition fails and is accordingly dismissed. Parties are left to bear their own costs.

17. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 5th day of June, 2023.

Sd/-
(HANS RAJ),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-**INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**
(CAMP AT MANDI)

Ref. No.	:	51/2021
Date of Institution	:	12-3-2021
Date of Decision	:	14-06-2023

Shri Bhram Dev Sharma s/o Late Shri Nand Lal, r/o House No.104/12, Upper Mangwain, Mandi Town, Tehsil Sadar, District Mandi, H.P. . .*Petitioner* .

Versus

Shri Jyoti Malhotra, Prop. M/s Tara Chand Malhotra & Sons Arms and Ammunition Dealers, Thanehra Muhalla, Mandi Town, Tehsil Sadar, District Mandi, H.P. . .*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the petitioner	:	Smt. Priyaka Sharma, Ld. Adv.
For the respondent	:	Sh. N.L. Kaundal, Ld. AR

AWARD

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short).

"Whether the alleged demands raised by Shri Bhram Dev Sharma s/o Late Shri Nand Lal, r/o House No.-104/12, Upper Mangwain, Mandi Town, Tehsil Sadar, District Mandi, H.P. before Shri Jyoti Malhotra, Prop. M/S Tara Chand Malhotra & Sons Arms and Ammunition Dealers, Thanehra Muhalla, Mandi, Mandi Town, Tehsil Sadar, District Mandi, H.P. vide demand notice dated 12.05.2017 (copy enclosed) regarding illegal termination of services w.e.f. November, 2015 without serving any notice, without paying any retrenchment compensation and without given 10% increase in the salary per month from year, 2009 to 2015 at par with his counter-parts without complying with the provisions of the Industrial Disputes Act, 1947, is maintainable, legal and justified? If yes, what amount of financial, other service benefits the above worker is entitled as per demand notice to from the above employer/Management?"

2. The case of the petitioner as made out from the claim is that he was engaged as a clerk on 1.8.1985 by the respondent after his superannuation from HRTC. He worked with full vigor and zeal to the entire satisfaction of the respondent for as long as 30 years without any complaint. He was drawing salary of Rs. 8639/- per month in the year 2009-10 and in the year 2010-11 he was drawing salary of Rs. 9502/-. Thereafter the respondent started causing anomaly in the payment of wages to the petitioner and therefore, a shortfall of Rs.1,08,101/- occurred in the wages of the petitioner which is in violation to the labour laws. The services of the petitioner were terminated vide letter dated 13.11.2015 through ordinary envelop received on 18.11.2015 and violation of Section 25-F took place as no compensation was paid to the petitioner. The grievances of the petitioner therefore, is to the effect that firstly his services were wrongly terminated without following the procedure of the law, and secondly, he was not given annual increment of 10% as compared to other similarly situated workers, and therefore, he had to suffer considerable financial loss hence, he was entitled for the relief as claimed by him in the demands.

3. The respondent has resisted and contested the claim on the ground that it was not maintainable. It is submitted that the present reference in itself is not maintainable as it could not have made under Section 2-K of the Act as the demand was raised by the petitioner in individual capacity and not by Union of workers. In case, there were any demands, it was for the Union to come forward and present the demand charter which has not been done in this case. It is further explained that the services of the petitioner were never terminated but he was discharged from his duties vide letter dated 13.11.2015 by taking into account that he was 87 years of age and he was not able to work on account of his ill health. It is also submitted that since the petitioner was performing the work in supervisory capacity, therefore, he was not a workman as defined under section 2(s) of the Industrial Disputes Act, 1947, and therefore, he is not entitled for any relief. According to the respondent, since no relationship of the master and servant existed between petitioner and the respondent on the date of the demand as the petitioner was discharged long back where after he has received full and final amount of gratuity, the claim was not maintainable as nothing subsisted for adjudication, hence the petitioner was not entitled for any relief.

4. Replication was filed by the petitioner wherein he reaffirmed the averments made in the petition and denied those made in the reply.

5. From the pleadings of the parties and language of the reference, following issues were framed for determination on 16 December, 2022:—

1. Whether the services of the petitioner were terminated by the respondent in violation to the provisions of the Industrial Disputes Act ? . .*OPP.*

2. Whether the petitioner was not given 10% increase in the salary per months commencing from the year 2009 to 2015 at par with the similarly situated employees of the respondent, as alleged? . .*OPP.*

3. If issues no. 1 and 2 are held in affirmative, or either of the issue is held in affirmative, then to what is the nature of the relief to which the petitioner is entitled to ? . .*OPP.*

4. Whether the claim is not maintainable for the reason that under Section 2-K of the Act, the same should have been initiated through workers union and not individually as has been done this case? . .*OPR.*

5. Whether the petitioner is not a workman under Section 2(s) of the Act as alleged and he was working in the supervisory capacity as alleged? . .*OPR.*

Relief.

6. I have heard learned Counsel for at length and considered the material on record.

7. For the reasons recorded hereinafter, the findings of this Court on the above issues are as under:—

Issue No.1	:	No
Issue No. 2	:	No
Issue No. 3	:	Decided accordingly
Issue No. 4	:	No
Issue No. 5	:	No
Relief	:	Petition is per **partly allowed** operative portion of the Award.

REASONS FOR FINDINGS

Issue No.5

8. This issue is being taken up firstly for disposal for the sake of convenience. The respondent has though alleged that the petitioner was working in the supervisory capacity but no evidence has been led to this effect. It is not the case of the respondent that the petitioner was engaged as supervisor or the superintendent in the office and he was supposed to supervise the work of the rest of the employees working with the respondent. The petitioner has specifically pleaded in para no. 1 of his claim that he was appointed as a clerk, and the respondent has admitted this averment in the reply. In view of this clear-cut admission on the part of the respondent, nothing survives for determination. It is thus an established, rather an admitted fact, that the petitioner was

working as a clerk and not as a supervisor with the respondent. When such is the position, he is covered in the definition of the workman as given in section 2(s) of the Act, and he has every locus standi to file this claim and his claim can not be debarred on the plea as taken by the respondent. This issue is held against the respondent.

ISSUE No.4

9. The learned AR appearing for the respondent has raised a very serious objection regarding the maintainability of the reference itself. It has been pleaded in the para no. 2 of the preliminary objection no. 2 that the demands raised by the petitioner are not backed by the Trade Union as required, and this very objection was raised before the Appropriate Government, but the same was overlooked, hence, claim was liable to be dismissed. On the other hand, the learned counsel for the petitioner has argued that this is not the stage to raise this type of objection, and, the court is supposed to answer the reference in the manner it has been received by it.

10. It is true that the demand charter has to be backed by the Trade union as no individual demand can be raised and converted into reference as per the provisions of the Industrial Disputes Act, but it is equally true that this court acquires the jurisdiction to deal with a matter after a reference is received from the Appropriate Government. This court is supposed to answer the reference as it has been received and this court does not enjoy the powers to find faults with the reference and reject the same without answering it. Even if the reference so made to the court by the Appropriate Government is in violation to any provision of the Act, even then this court can not comment upon the same and reject the reference. This court can not refuse to answer a reference until it has been received from an agency not authorized by the law to make the same. Since this reference has been received from the appropriate government empowered by the law to make such a reference, this court can not examine the question regarding the manner the matter was dealt with at the conciliation and consideration stage by the Appropriate Government. In case the reference was made by the appropriate Government on a wrong motion, the respondent was not without any remedy. He could have assailed the action of the Appropriate Government by way of writ petition before the Hon'ble High Court of H.P and got the same quashed. No such steps were taken by the respondent to assail the reference. When such is the position, the respondent can not assail the reference now at this stage. The only option left with the respondent is to contest it on merit and contend that the relief claimed by the petitioner is not available to him on merits. Otherwise also, the petitioner has raised the demand regarding his illegal termination, which he is competent to raise under section 2 A in individual capacity. Since the demand regrading parity in the pay with other similarly situation workers is closely connected to the terms of the employment, it is also part of the first demand, and both could not have been separated. Hence, this court can not refuse to adjudicate both the questions together in this reference. Hence, the objection as raised on behalf of the respondent is not maintainable, and is rejected. It is held that this court can not refuse to adjudicate the claim on merits as it has been filed in support of the reference which was never assailed by the respondent. The claim is held as maintainable and this issue is decided against the respondent.

ISSUE No.1

11. It is an admitted fact that the petitioner has served in HRTC earlier and after his superannuation from HRTC, he has worked for 30 years with the respondent. This fact has been pleaded by the petitioner in his claim itself. It is also not in dispute that in the year 2015, the petitioner has acquired the age of 87 years. This fact is also mentioned in the discharge letter, copy whereof has been tendered on the record as Ext. RW1/B. The petitioner has not disputed his age as 87 at the time of his alleged termination. It has nowhere been pleaded by him that he was not 87 years at the time of his alleged termination. A person can not work throughout his life and the

growing age not only reduces the capacity to work but body of the human being has its own limitation. The petitioner has admitted during his cross-examination that he has himself tendered his resignation from the job. When this fact is considered with the representation dated 12.10.2017 (Ext. PW1/B & RW1/C, same document tendered by both the parties inadvertently), it is clear from para no. 8 that the petitioner was also suffering with some aliment. Otherwise also, judicial notice can be taken of the fact that the age of 87 is an advanced age and no person can work with same efficiency in which he was working before he has attained the age of sixty. The aliments at this advanced age further reduces the working capacity of a person. Thus the petitioner was of 87 years of age and unwell, and for this reason, he has also tendered his resignation, which was perhaps not dealt with the respondent as nothing has been said about the same. The respondent proceeded to deal with the case of the petitioner under section 2(oo)(c) and discharged the services of the petitioner on account of his ill health and advanced age. This fact has been specifically recorded in the letter sent to the petitioner and proved on the record as RW1/B. The petitioner has also not disputed this letter. According to him, it was sent to him through ordinary post, whereas, it should have been sent through registered letter. It does not make any difference whether the letter was sent through registered post or ordinary post. When the petitioner has admitted the receipt of the same. When the age of the petitioner was 87 years and he was unwell, and had himself tendered his resignation, no prejudice has been caused to him, in case he was discharged from the services by offering him one month salary as well. Termination on the ground of ill-health is not a punishment nor does it attach any stigma to the person terminated. There is a specific provision to his effect in section 2(oo)(c) of the Act. The letter issued by the respondent and tendered on the record as Ext. RW1/B also is self speaking. There was no question of termination of the services of the petitioner by complying with the provision contained in section 25 F of the Act as he has already reached such an age that his services could not have no longer been taken by the respondent. Had the resignation of the petitioner been accepted by the respondent, he would not have received anything, whereas, on termination of his services on the ground of ill health and advanced age, he was offered one month notice pay which he never collected. The respondent has come up with the case that the petitioner did not come forward to receive this amount. Thus it is held that there is no violation of section 25 F of the Act in the case of the petitioner. His services have been terminated on the ground of ill-health and he had already completed 87 years and he could not have been permitted to work any further. Thus issue no. 1 is held against the petitioner.

ISSUE No.2

12. The petitioner has lead oral and documentary evidence on this issue. The respondent has admitted the fact that no hike was given to the petitioner in his salary after 2013. The reason for not giving the hike, as per the respondent, was inefficiency of the petitioner due to ill health and old age. It is submitted that he was given consolidated pay of Rs. 10500/- till the year 2015 and secondly, the hike in the salary depends upon the performance of each employ and it can not be claimed on the ground of parity. There is no document on the record filed and proved by the respondent to prove that the respondent was ever informed by way of any writing that his performance was not up to the expected level, and therefore, he could not be given any hike in the salary in the same manner it was being done to other employees. No document was ever prepared in the office of the respondent to derive a satisfaction to the effect that petitioner was not entitled for the enhancement on account of non-performance. No such document has been placed on the record of this case. The respondent has come up this explanation for the first time while filing this reply and such an explanation is not sufficient without any paper work at the stage when the benefit was denied to the petitioner.

13. The petitioner has filed on record salary break-up of the employees of the respondent as Ext. PW1/C and there is no denial to this document by the respondent. It is not pleaded by the respondent that this document is incorrectly prepared. A careful perusal of this document would go

to show that from the year 2009 to 2010 onwards 10% increase was given to the petitioner till the year 2012-2013 and thereafter the consolidated payment of Rs.10500/- was made to him. It is clear from the chart that payment of Shri Jagdish was increased every year as 10% and there are several other employees who were given the same treatment. When others were given 10% increase, the petitioner could not have become a exception when no document was prepared to reach to this conclusion that the petitioner was not working to the satisfaction of the respondent. There should have been any noting in the office whereby it was recorded at that time that the performance of the petitioner was not upto the mark, hence 10% increase could not be given. Such communication should have been made to the petitioner then and there so that he would either increase his insufficiency or take the steps in accordance with the law. He could have resigned from the work, in case, he himself felt that he was not able to work. The petitioner was not given any show cause notice before taking the step to not to give him the financial benefit like other employees. It is right of every employees to be paid in the same manner in which similarly situated employees are paid. There could not be any disparity or anomaly in the pay scale of the similar situated person without satisfactory reasons. Had any such document been filed on the record in which it was recorded at the very beginning that in case person is not able to work up to the mark he will not be entitled to 10% increase, the position would have different. When there is no document showing that such increase was conditional nor any such document was prepared at the time when increase was not given to the petitioner, the respondent could not have withheld the benefit of the petitioner arbitrarily. The petitioner was liable to be dealt with similar manner in which others have been dealt with. Since the increment of the petitioner was withheld for the year 2013, 2014 and 2015 whereas, same increment was granted to the others therefore, the demand as raised by the petitioner is genuine and justified and respondent can not withhold the amount.

14. The petitioner has himself prepared the statement showing as to how the difference has come and how this amount was recoverable from the respondent. There is no dispute to this calculation and the calculation has also rightly been prepared. The amount claimed therein is also correct and the petitioner is entitled for this amount. So far as respondent Shri Jyoti Malhotra is concerned, he has appeared as RW1 in the witness box and in his affidavit Ext. RW1/A he has tried to explain in para no.4 of the affidavit that there was no provisions to pay 10% increase to petitioner and other employees. If there is no such written provision why 10% increase was made every year to the petitioner as well as others has not been explained by him. So far as accepting the gratuity amount by the petitioner is concerned, it may be stated here that the petitioner was not even paid any gratuity and he had to file a petition in the year 2016 and copy of the order has been tendered on record as Ext. RW1/D. It therefore can not be said that the petitioner has accepted his gratuity amount without any objection, and therefore, he could not have raised the demand. Hence the demand to the effect that the petitioner was entitled to 10% increase every year like his fellow employee and the same was withheld without any sufficient cause by the respondent, is genuine and petitioner is entitled to recover the arrears, which have rightly been calculated i.e. Rs.1,08,101/. The petitioner is held entitled to one month's notice pay as the same has been not received by him after he was discharged from the service. Issue no. 2 is decided accordingly.

ISSUE No.3

15. In view of my findings on issues no.1 and 2 the petitioner is not entitled for compensation or reinstatement in violation to Section 25-F of the Act but he is held entitled to the 10% increase on the similar pattern in which other employees were given by the respondent. Therefore issue no.3 is decided accordingly.

RELIEF

16. In view of the above, it is held that the services of the petitioner were not terminated in violation of Section 25-F of the Act yet it is further held that petitioner has raised genuine demand of 10% increment as was admissible to others till the date of his discharge and he has held entitled to recover the sum of Rs.1,08,101/- calculated by him along with interest @ 6% per annum. He is also held entitled to one month's notice pay which has not been received by him at the time of discharged from the services. Parties are left to bear their costs.

17. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 14th day of June, 2023.

Sd/-
(HANS RAJ),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-**INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**
(CAMP AT MANDI)

Ref. No. : 179/2016

Date of Institution : 26-3-2016

Date of Decision : 15-6-2023

Shri Hem Singh s/o Shri Jindu Ram, r/o Village Rathoha, P.O. Chunahan, Tehsil Balh, District Mandi, H.P. . .*Petitioner* .

Versus

The Senior Executive Engineer, Electrical Division, H.P.S.E.B. Limited, Bilaspur, District Bilaspur, H.P. . .*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the petitioner : Sh. Shyam Kumar, Ld. Adv.

For the respondent : Sh. R. S. Rana, Ld. Adv.

AWARD

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short).

"Whether alleged termination of services of Shri Hem Singh s/o Shri Jindu Ram, r/o Village Rathoha, P.O. Chunahan, Tehsil Balh, District Mandi, H.P. during November,

1992 by the Senior Executive Engineer, Electrical Division, H.P.S.E.B. Limited, Bilaspur, District Bilaspur, H.P., who had worked on daily wages only for 187 days in year, 1992 and has raised his industrial dispute after more than 21 years vide demand notice dated 12.09.2014, without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period of 187 days in year, 1992 and delay of more than 21 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above emplolyer/management?"

2. The case of the petitioner as made out from the claim is that he was engaged as daily wage beldar w.e.f. 1.1.1991 in the respondent department and he worked in continuity till 31.12.1995 when his services were verbally terminated without assigning any reason. Workmen junior to him namely Shri Paras Ram s/o Shri Goverdhan was retained and regularized with the passage of the time, and therefore, the petitioner was subjected to unfair labour practice. Fresh hands were also engaged after the oral termination of the petitioner. The petitioner made verbal requests to respondent to re-engage his services but nothing was done. Matter reached at Hon'ble High Court of Himachal Pradesh and the writ was decided on 20.12.2012 and the writ was allowed and the appropriate government was directed to refer the matter to this court. On the aforesaid averments, the petitioner has claimed for his re-engagement with back wages or the retrenchment compensation as the case may be.

3. The respondent has resisted and contested the claim on the plea of maintainability, resjudicata, cause of action, limitation etc. the claim is said to have filed after the delay of 26 years and it was vitiated by delay and laches. On merits, the case of the petitioner has been denied with the explanation that petitioner was engaged on 26.3.1992 to execute a specified work and he worked on 25.11.1992 where after he abandoned the work at his own. The petitioner is said to have worked only for 187 days and no violation of Section 25-F of the Act took place as the requirements to attract this provision are not completed. The respondent further pleaded that Shri Paras Ram s/o Shri Governdan had worked in continuity and therefore, his services were regularized in the year 2010. Other allegations are denied and it is submitted that petitioner has failed to make out a case for the relief, and therefore, the claim petition was liable to be rejected.

4. No rejoinder was filed by the petitioner and from the pleadings of the parties and material available on the records, following issues were framed for determination on 26.6.2018:—

1. Whether termination of services of the petitioner by respondent during November, 1992 is/was legal and justified as alleged? . .*OPP.*

2. If issue no.1 if proved in affirmative, to what service benefits the petitioner is entitled to? . .*OPP.*

3. Whether the claim petition is not maintainable in the present form as alleged? . .*OPR.*

4. Whether the petitioner has not approached the Court with clean hands as alleged? . .*OPR.*

5. Whether the petitioner has suppressed the true and material facts from the Court as alleged? . .*OPR.*

6. Whether the petitioner has no cause of action to file the present case as alleged? . .*OPR.*

7. Whether the petitioner has no locus standi to file the case as alleged? . .*OPR.*

8. Whether the claim petition is time barred by limitation as alleged? . .*OPR.*

Relief.

5. I have heard learned Counsels for the parties at length and considered the material on record.

6. For the reasons recorded hereinafter, the findings of this Court on the above issues are as under:—

Issue No.1	:	No
Issue No. 2	:	Decided accordingly
Issue No. 3	:	No
Issue No.4	:	No
Issue No.5	:	No
Issue No.6	:	No
Issue No.7	:	No
Issue No. 8	:	Decided accordingly
Relief	:	Petition is partly allowed awarding lump sum compensation of Rs. 50,000/- per operative portion of the Award.

REASONS FOR FINDINGS

Issues No.1& 8

8. Both these issues being interlinked and interconnected are taken up together for determination for the sake of evidence.

9. The petitioner alleges his engagement on 01.01.1991 and termination on 31.12.1995. The respondent has denied this fact. It is submitted that the petitioner was engaged on 26.03.1992 as a casual labourer and he worked only till 25.11.1992 and thereafter abandoned the job. The initial onus is upon the petitioner, but he has led no evidence except for his self serving statement. No family member, no co-worker or relative has been examined to prove the fact that the petitioner has worked for five years with the respondent. No documentary evidence has been led to prove that his services were engaged in January 1991. Similarly no evidence has been led to prove that his services were terminated on 31.12.1995. The date of the alleged termination has been mentioned as November 1992 in the reference. This court certainly can not travel beyond the scope of the reference. The petitioner has not even challenged the reference and got the same modified through the medium of writ petition. Thus, it is not established that the services of the petitioner were engaged in January 1991 and he served till December 1995. In this situation, the case as pleaded by the respondent regarding the period for which the petitioner worked has to be accepted. The petitioner has placed on the record his mandays Chart as PW1/B and he has not disputed the correctness of the same. This mandays chart also shows that the petitioner has worked w.e.f March 1992 to November 1992 for total 187 days. The mandays chart has been prepared from the records

of the respondent and there are no reasons to disbelieve the same. Thus it is established that the petitioner has worked only for 187 days with the respondent as is clear from the mandays chart. The case as pleaded by the petitioner is not established.

10. The respondent has pleaded that the petitioner has himself abandoned the work. The plea of abandonment being a plea of facts has to establish by the employer by leading cogent and convincing evidence. The respondent has examined Er. Yashvinder Singh as RW1 in the witness-box. He has sworn his affidavit Ext.RW1/A. In this affidavit, he has said that petitioner left the work at his own. When he was subjected to cross-examination he admitted that no notice was issued to the petitioner to call him back and no explanation was called for. When the respondent has not discharged the onus placed upon it, the plea of abandonment is not established. Ignorant labour class can not be deprived of their valuable rights without apprising them of the same. It is the duty of the respondent to call back the workman in the case of his absence and apprise him of those valuable rights that have already accrued in his favour. A poor and illiterate workman can not be left at his own mercy and Industrial disputes Act being a beneficial piece of legislation leans in favour of the labourer rather than the employer. In the case in hand, once the employer has not taken any steps to call back the petitioner, in case, he had absented himself in the year 1992, the plea of the abandonment as taken up by the respondent fails. Once the plea of abandonment is not established it is to be presumed that the services of the petitioner were terminated in November 1992.

11. Since the petitioner has not worked for minimum 240 days before his termination in the year 1992 therefore, he can not take the benefit of Section 25-F of the Act.

12. The petitioner has further come up with the plea that workmen junior to him were retained, whereas, his services were terminated. He has specifically pleaded in para no. 2 of the claim that Sh. Paras Ram son of Sh. Goverdhan was allowed to continue the work, and his services were regularized with the passage of time. The respondent in reply to these allegations have not, claimed that Sh. Paras Ram was senior to the petitioner. The allegation that this person was junior to the petitioner has thus been impliedly admitted. The only justification given by the respondent is that this worker has worked in continuity and therefore, his services were regularized in the year 2010 when the respondent has not come with the specific case that this Paras Ram was senior to the petitioner, it is therefore, proved that this Paras Ram was junior to the petitioner. When a workman junior to the petitioner was already working at the time when the petitioner allegedly absented himself, it was the duty of the respondent to have called the petitioner back and apprised him of the valuable right of being terminated after the termination of the services of this Paras Ram. Thus at the time when the petitioner left the work, his services were protected by the rule of 'First Come Last Go' as Sh. Paras Ram would have been the first person to be terminated, in case, the respondent intended to terminate services of any of its workers. The petitioner had an important right in his favour when he left the work. In this situation, it was the duty of the respondent department to have called the petitioner back and apprised him of his right of being terminated after Sh. Paras Ram. Once the petitioner was apprised of this valuable right, he might have not left the work with the hope that he was senior workman and will get the benefits first in time in comparison to his juniors. Since the petitioner was neither called back on his absence nor he was apprised of his valuable right of 'First come last go, therefore, the plea of the abandonment of job as taken by the respondent is not established. Once this plea is not established, then even if the petitioner has himself absented from the work, it will amount to implied termination of his services by the respondent for the reason that the respondent has not discharged the duty of calling the petitioner back to work and apprising him of his right. The plea of abandoned has thus failed and implied termination of the services of the petitioner has taken place in this case. Since the juniors to the petitioner were already working and since the respondent has not discharged its duty before

presuming the abandonment of the services by the petitioner, therefore, the violation of section 25 G has been made out in this case.

13. The petitioner has alleged that fresh hands were engaged by the respondent after his services were terminated. The respondent has denied this allegation. It is explained that no fresh hand in the category in which the petitioner was engaged has been engaged. No evidence has been led by the petitioner on this allegation. Since the petitioner has levelled the allegations, it was his duty to name those workmen who were engaged after the year 1992 by the respondent. No such fact has been deposed by him. Had he named any such person, the onus would have shifted upon the respondent to prove otherwise. The petitioner has himself placed on the record the seniority list of the workmen on the record as Ext. PW1/C. A careful perusal of this list shows that no person has been engaged by the respondent at its own and whosoever was re-engaged, they were re-engaged in compliance to the Awards passed by the court. The petitioner has thus failed to prove that the respondent has violated the provision of section 25 H of the Act.

14. The petitioner has raised the demand after 21 years. The petitioner is silent and has not explained as to why he slept over his right for a period of 21 years. Thus much water has flown under the bridge. There is certainly delay in approaching the court on the part of the petitioner. The services of the petitioner were terminated in November 1992 and he has though alleged that he raised the demand vide demand notice dated 12.9.2014. The only fact that is admitted and proved is regarding raising of the demand in the year 2014 and thus more than 20 years have been elapsed in between and petitioner has not taken active step to raise the demand. In this manner he is proved to have slept over her rights. Law is well settled by the Hon'ble High Court of Himachal Pradesh on this point. In **Prakash Chand vs. Executive Engineer, HPPWD, Civil Writ Petition No. 273/2019 decided on 09 April, 2019**, in which the retrenched workman had raised the dispute after nine years before this court, he was awarded compensation to the tune of 1 lakh. The Hon'ble High Court in Writ Petition was pleased to affirm the award holding that much water had already flown under the bridge and thus no error was committed by ordering the compensation in place of reinstatement. The Hon'ble High Court again in **Vyasa Devi vs. Executive Engineer, HPPWD, Civil Writ Petition No.640 of 2019 decided on 24 April, 2019** was pleased to hold in the similar manner and the award of the Tribunal whereby compensation of Rs.60,000/- was awarded in her favour was upheld as there was delay of 11 years in raising the demand by Smt. Vyasa Devi.

15. In the case in hand, taking into account the delay of more than 21 years, the petitioner is held not entitled to the relief of reinstatement despite of the fact that the violation of section 25 G is established in this case. However, taking into account the facts and circumstances of the case that petitioner has worked only for 187 days and the length of delay occasioned in raising the demand ends of the justice shall be met, in case, a lump sum □50,000/- is awarded in favour of the petitioner as compensation in lieu of reinstatement and other consequential benefits. Petition is held to be maintainable. Issues no. 1, 3 and 8 are decided accordingly.

ISSUE No. 2

16. In view of the aforesaid discussions, the petitioner is held entitled to □50,000/- (Rupees Fifty Thousands only) in lieu of reinstatement and other consequential benefits. This issue is also decided accordingly.

ISSUES No. 3, 4, 5, 6 & 7

17. In view of the aforesaid discussions on the issues above, the petition is maintainable, petitioner has the cause of action and locus standi as well and he has approached the court with

clean hands and he had also not suppressed any material facts from the court, hence all these issues are decided in negative.

RELIEF

18. In view of my discussion on the above issues, it is held that though there had been violation of Section 25-G of the Act but the petitioner had raised demand after a gap of more than 20 years and his claim for reinstatement has been thus vitiated by delay and laches, hence reinstatement and other consequential benefits cannot be granted in his favour but he is held entitled for compensation to the tune of □50,000/- (Rupees Fifty Thousands only), which would be paid within four months by the respondent and from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 6% per annum on the said amount from the date of award till the date of its realization. Parties are left to bear their costs.

19. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 15th day of June, 2023.

Sd/-
(HANS RAJ),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-**INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**
(CAMP AT MANDI)

Ref. No. : 84/2020

Date of Institution : 11-09-2020

Date of Decision : 15-6-2023

Smt. Leela Devi d/o Shri Molak Ram, r/o Village Safru, P.O. Rewalsar, Tehsil Balh, District Mandi, H.P. . .*Petitioner.*

Versus

The Planning Officer, Town Planning Office, Sunder Nagar, District Mandi, H.P.
. .*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the petitioner : Sh. Bimal Sharma, Ld. Adv.

For the respondent(s) : Sh. Anil Sharma, Ld. Dy. D.A.

AWARD

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short):

"Whether the termination of services of Smt. Leela Devi d/o Shri Molak Ram, r/o Village Safru, P.O. Rewalsar, Tehsil Balh, District Mandi, H.P. by the Planning Officer, Town Planning Office, Sunder Nagar, District Mandi, H.P. w.e.f. 04.09.2018 without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, what amount of back wages, past service benefits, seniority and compensation the above worker is entitled to from the above employer?"

2. The case of the petitioner, in brief, is to the effect that she was engaged as a Safai Karamchari in the respondent office on 31.12.2015 and she worked in continuity till 4.9.2018 on consolidated salary of Rs.1000/- per month. Her services were terminated verbally on 4.9.2018 despite of the fact that she had worked for more than 240 days in preceding 12 calendar months and thus violation of Section 25-F of the Act took place. She was not paid any retrenchment compensation and workmen junior to her were retained and fresh hands were also engaged. On such averments she had prayed for her reinstatement with all the consequential benefits.

3. The respondent has resisted and contested the claim on the plea of maintainability, locus standi and on the plea of concealment of material facts. On merits it is the case of the respondent that neither any sanction post of sweeper is available in the office nor any person was engaged as Safai Karamchari. It is explained that in the absence of sanction post of sweeper it was only a time gap arrangement whereby the petitioner has agreed to work for 5 days in a month and she was paid @ Rs.180/- later on Rs. 200/- per day. Payment was made to her through receipts and later on she started quarreling with the peon and other staff members and her behaviour became disrespectful with the passage of the time. She was asked not to come to the work and her services were not required. She is said to have not worked for more than 60 days in a calendar year and there is no question of completion of 240 days of work. It is submitted that she was neither a workman nor the provisions of Industrial Disputes Act are applicable to her case, hence claim is liable to be dismissed.

4. The petitioner has filed rejoinder and reaffirmed the averments so made in the petition and denied those made in the reply.

5. From the pleadings of the parties and language of the reference, following issues were framed for determination on 8.6.2022:—

1. Whether termination of the services of the petitioner w.e.f. 04.9.2018 by the respondent is/was illegal and unjustified as alleged? . .*OPP.*

2. If issue no.1 is approved in affirmative, what service benefits the petitioner is entitled to? . .*OPP.*

3. Whether the claim petition is not maintainable, as alleged? . .*OPR.*

4. Whether the petitioner has no locus standi to file present case, as alleged? . .*OPR.*

5. Whether the petitioner has not come to the court with clean hands and concealed the true and material facts as alleged? . .*OPR.*

6. Whether the petitioner is estopped to file the present case, as alleged? . .*OPR.*

7. Relief

6. I have heard learned Counsel for the petitioner as well as learned Dy. District Attorney for the respondent at length and considered the material on record.

7. For the reasons recorded hereinafter, the findings of this Court on the above issues are as under:—

Issue No. 1	:	Negative
Issue No. 2	:	Negative
Issue No. 3	:	No
Issue No. 4	:	No
Issue No. 5	:	Yes
Issue No. 6	:	No
Relief	:	Petition is **dismissed** per operative portion of the Award

REASONS FOR FINDINGS

ISSUES No.1 & 2

8. Both these issues are interlinked and interconnected and can be disposed of by single finding.

9. The petitioner alleges that after being engaged as Safai Karamchari on 31.12.2015, she worked in continuity and completed the work of 240 days in preceding 12 calendar months before her termination on 04.09.2018. According to her, she was paid consolidated salary of Rs. 1000 per month. The respondent, on the other hand has been very specific to the effect that there was no sanctioned post of the sweeper in the office, hence, no such sweeper could be engaged on daily wage basis. It is further case of the respondent that respondent use to do the cleaning work for five days in a month and she was paid Rs. 180 per day initially and later on Rs. 200 per day for these five days and this payment was made from the office expenses head as there was provision for the same in the rules. The respondent has relied upon the notification of the State Government in support of its case as Ext. RA. Apart from this, the respondents have filed and proved on the record the receipts regarding the payments received by the petitioner for the period of five days as Ext. R-1 to R 25. The petitioner has led on documentary evidence in support of her case.

10. It is thus an admitted position on the record that the petitioner has done the sweeping work in the office of the respondent at least for 25 months. Such a fact is established from the payment receipts signed by the petitioner and placed on the record by the respondent. The disputed question is regarding the number of the working days. The petitioner claims that she has worked for more than 240 days even before her termination, whereas, the respondent has pleaded that the petitioner use to work for 5 days in a month and thus she has not worked for more than 60 days in year, and therefore, neither the violation of the provision contained in section 25F is made out nor the petitioner is proved to have been engaged by the respondent in the manner as alleged by her.

11. While leading the evidence, the respondent has placed on the record as many as 25 pay receipts vide which the petitioner is said to have received the payments during the period she did the sweeping work for the respondent. All these receipts were shown to her and she admitted her signatures on 20 receipts and was not confident in identifying her signatures on the rest of the receipts. When the admitted receipts are carefully examined, it is clear from the perusal of the same that she was made to do the cleaning work in the office only for five days in a month and the payment of Rs. 200/- per day total 1000/- was made to her. Even the dates (five in number) when the cleaning work was done by her on a particular month have been shown in the receipts. These receipts prove that the petitioner use to work for five days a month and thus her working days would come to 60 in a year. Since the petitioner has taken up the plea that she has worked for more than 240 working days prior to her alleged termination, therefore, the onus is upon her to prove this fact. The petitioner has not led any cogent and convincing evidence on this aspect. Herself serving statement in the shape of the affidavit is not sufficient to discharge the onus placed upon her. The petitioner could have examined any of her family member, friend or any other person, who has seen her working in the office for all the days of a week. Had any such witness been examined, this court would have appreciated the evidence of such witnesses and come to a finding on the same. When no person has been examined, the petitioner has failed to meet the documentary evidence led by the respondent. The receipts have been prepared in the regular course of the working and signed by the petitioner, and therefore, there are no reasons to disbelieve the same. It can not be said that the officers of the respondent department were already anticipating the litigation, and they created evidence in their favour in advance to meet the same. Self serving statement of the petitioner is not sufficient to prove that she has worked for more than 240 days before her alleged termination. Rather, it is proved from the documentary evidence led by the respondent that the petitioner use to work only for five days in a month and she was paid from the Office Expenses Head towards the cleaning and sweeping charges which was admissible from the notification of the State government tendered on the record as Ext. RA. Para 5 of this notification permits to spend amount from the "Head Office Expenses" towards the cleaning and sweeping charges etc. These expenses are not made from the wages Head.

12. When the petitioner is proved to have worked only for 60 days in a calendar year, it can not be said that the petitioner has worked for more than 240 days before her alleged termination in 12 calendar months. When it is so, the violation of the provision contained in section 25 F is not attracted even remotely in this case, even if it is held that the services of the petitioner were terminated in the manner as alleged. The petitioner has thus failed to make out a case for the relief claimed. Since the petitioner was paid from the Office Expenses Head, she can not claim any relief at all, as the payment made from the office Expenses Head are not the wages but it is different type of expenditure which is permissible only for the purpose of maintenance and for the up-keeping the office. No office can spend more than Rs. 3000/- per month as a whole from this Head as per the financial rules. When such is the position, the petitioner does not become a workman for the purpose of the application of the Act. The respondent office could have engaged a new sweeper for a new day of the week and paid him from the office expanses Head. Such practices was also permissible to the respondent. It appears that the services of the petitioner were taken repeatedly for the sake of convenience and she must have agreed for the same. Otherwise, the cleaning and sweeping work of the office could have been got done from a new sweeper every week as he was to be paid form the Office Expenses Head at the end of the day. The respondent has come up with the specific pleadings that the petitioner has herself requested that she be permitted to do this work, hence, she was given the work every week. It is clear from the statement of Sh. Adarsh Kumar Planning Officer (RW1) that work of the sweeping and cleaning the office was taken from Smt. Ram Pyari and Meera, whenever the petitioner did not report for the work. This witness has produced the receipts pertaining to the work done and payment made to Smt. Ram Pyari pertaining to April 2018, when the services of the petitioner were not terminated even as per her own case. It is thus very much clear that whenever the petitioner was not available, the work of the cleaning was

got done from Smt. Ram Pyari and Meera and they were also paid from the Office Expenses Head for the work done by them. Thus the petitioner can not claim her status that of the workman for the purpose of the violation of any of the provision of the Act. Rather, it is proved from the aforesaid material that there was no sanctioned post of the sweeper in the office of the respondent, and therefore, no sweeper could be engaged on part time or daily wage basis. The respondent office in order to tackle the situation, decided to spend on the cleaning and sweeping work from the Office Expenses Head by taking recourse to the notification Ext. RA which permitted to do so. The petitioner volunteered to work and she was, therefore, paid Rs. 200/- per day, and made to work only for five days in a month. Whenever she was not available, the work was got done through other ladies mentioned above in the same manner. It is the case of the respondent that later on the work of the petitioner was not satisfactory and she started quarreling with the office staff, hence, her services were not availed any further. The petitioner can not claim any right to be retained as a sweeper for the simple reasons that she was never engaged as a workman. She was rather paid from the office expenses head for keeping the house neat and clean. The respondent could get this work done from any other sweeper also, and the petitioner can not claim any preferential right to work for the respondent. She is, therefore, not even proved as a workman for the purpose of the Act.

13. Now comes to the questions of violation of the provision contained in section 25 G and 25 H of the Act, as alleged by the petitioner. It may be stated at the very beginning that since the petitioner is not proved to be a workman for the purpose of this case, and since, it has been held that she was never engaged as a workman, therefore, the question of violation of the aforesaid two provisions does not arise at all. Otherwise also, it is not the case of the petitioner that there were two sweepers including her, working in the office of the respondent and the sweeper junior to her was retained at the time of her termination. Thus there is no question of violation of section 25 G of the Act at all. So far as the question of violation of section 25 H is concerned, it is again not made out. Since there is no sanctioned post of the sweeper in the office of the respondent, therefore, there is no question of engaging any person as a sweeper without any post. The petitioner has not named any fresh hand engaged by the respondent in her place. She has vaguely stated in her statement that she has come to know that the respondent has engaged another lady in her place. No such evidence has been led by her. The respondent has denied that fact totally and the witness examined by the respondent has stated on oath that no fresh hand has been engaged by the respondent. He has explained that the sweeping work of the office is got done through casual workers by paying for the Office Expenses Head. Such facts have been mentioned in the affidavit Ext. RW1/A. There is nothing in his cross-examination which would show that any fresh hand has been engaged by the department. He has rather proved that the work of the sweeping and cleaning of the office was done through Meera Devi and Ram Pyari even during the period when the petitioner use to not to report to the work. It is the prerogative of the respondent to get the work done from the worker who gives satisfactory services as no person was engaged. Since the payments are made from the Office Expenses Head by the respondent, the respondents are always at liberty to choose a best service provider every time to get the work done, and such a practice shall not give the status of daily wager or part time worker to the person engaged. Thus for all the reasons discussed hereinabove, the petitioner has failed to make out a case for any relief. The claim petition is liable to be rejected. The issue under reference is decided accordingly.

ISSUES No. 3, 4 & 6

14. In view of the aforesaid discussions on the issues above, the petition is maintainable, petitioner has locus standi to file the claim it has been filed in support of the reference but it is different matter that the petitioner has failed to establish the claim. There can not be any estoppels against the petitioner as such plea is not available to the respondent in such like cases, hence all these issues are held in negative.

ISSUE No.5

15. The petitioner has felt aggrieved by the conduct of the respondent that she has not come to the court with clean hands and claimed that she was engaged on consolidated salary of Rs.1000/- whereas, receipts produced by the respondent show that she was made to work once a week and payment of Rs. 200/- was made to her, however, she was thus not a daily wager or part time worker. She has concealed all these facts from the court, hence this issue is decided against the petitioner.

RELIEF

16. In view of my above discussions, the present claim petition fails and is accordingly dismissed. Parties are left to bear their own costs.

17. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 15th day of June, 2023.

Sd/-
(HANS RAJ),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-**INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**
(CAMP AT MANDI)

Ref. No. : 323/2012

Date of Institution : 3-9-2012

Date of Decision : 15-06-2023

Smt. Kanta Devi w/o Shri Bhikham Ram, r/o Village Rahnu, P.O. Khaddar, Tehsil Joginder Nagar, District Mandi, H.P. . .*Petitioner.*

Versus

The Executive Engineer, HPPWD Division Joginder Nagar, District Mandi, H.P.
. .*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the petitioner : Sh. S.K. Sharma, Ld. Adv.

For the respondent : Sh. Anil Sharma, Ld. Adv.

AWARD

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short):

"Whether termination of services /giving breaks in services of Smt. Kanta Devi w/o Shri Bhikham Ram, r/o Village Rahnu, P.O. Khaddar, Tehsil Joginder Nagar, District Mandi, H.P. from time to time during March, 1999 to 31-08-2007 by the Executive Engineer, H.P.P.W.D. Division Joginder Nagar, District Mandi, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to fro the above employer?"

2. The case of the petitioner as made out from the claim is that she was engaged as daily rate beldar in the respondent department in August 1999 and initially she was kept in National Highway Division Joginder Nagar but later on when newly created HPPWD Division, Joginder Nagar came into existence her services were shifted in this Division. She worked on muster roll till the year 2007, but she was given fictional breaks every year in such a manner that she could not complete minimum 240 days whereas, workmen junior to her were given work for more than 240 days in each calendar year and they were regularized with the passage of time as per the policies of the State Government from time to time. The petitioner requested the respondent time and again till 31.8.2007 to not give her fictional breaks but no heed was paid and therefore, her interest was prejudiced. The petitioner therefore, raised the demand and during conciliation no amicable settlement could be had, hence the reference was made to this court by the Appropriate Government. As per the petitioner, earlier she could not filed her claim on the given date, therefore reference was decided against her and she therefore, approached the Hon'ble High Court whereby she was given an opportunity to file reference and the file was remanded. Thereafter, her claim was dismissed under Order 9, Rule 9 and she again approached the Hon'ble High Court of H.P, and vide order dated 14th July 2022, the file has been remanded to this court with the directions to receive the reference and decide the same accordingly. The case of the petitioner, thus in nutshell, is to the effect that fictional breaks were given to her in between 1999 to 2007, whereas, the workmen junior to her were given work for more than 240 days in each calendar year, and they were regularized prior to her. On such averments the petitioner has prayed for the relief that fictional breaks be condoned and she be held entitled for past service benefits including regularization on the date when she should have been regularized, in case, such fictional breaks were not given. She has prayed for the payment of compensation etc.

3. The respondent has resisted and contested the claim on the plea that it is not maintainable and necessary parties have not been joined. It also submitted that there is delay on the part of the petitioner. On merits, the case of the respondent is to the effect that petitioner has worked for 130 days in the year 1999, 220 days in 2000, 190 days in 2001, 181 days in 2002, 172 days in 2003, 170 days in 2004, 170 days in 2005, 171 days in the year 2006 and 201 days in the year 2007. Thereafter she has worked for more than 240 days in each calendar year and her services were regularized as per policy of the State Government w.e.f. 18.8.2015. The case of the respondent is further to the effect that petitioner was in the habit of remaining absent and no fictional breaks were ever given to her. She used to come to the work as per her own convenience and therefore, she could not complete minimum 240 days work in each calendar year therefore her seniority was counted after 2007 for the purpose of regularization and on completion of 8 years service with minimum 240 days in each calendar year, her services were regularized in the year 2015, hence she had no case in merits.

4. Rejoinder was not filed. From the pleadings of the parties and language of the reference, following issues were framed for determination on 11 January, 2023:—

1. Whether giving fictional breaks/termination of services of the petitioner time to time during March 1999 to 31.8.2007 by the respondent against the provisions of Industrial Disputes Act, 1947 is liable to be condoned? . .*OPP.*

2. Whether the petition is bad on account of delay and laches as alleged? . .*OPR.*

3. Whether the claim petition is not maintainable, as alleged? . .*OPR.*

Relief

6. I have heard learned Counsel for the petitioner as well as learned Deputy District Attorney for the respondent at length and considered the material on record.

7. For the reasons recorded hereinafter, the findings of this Court on the above issues are as under:—

Issue No.1 : Decided accordingly

Issue No.2 : No

Issue No.3 : No

Relief : Petition is **partly allowed** per operative portion of the Award

REASONS FOR FINDINGS

ISSUE No.1

8. This is the main factual and crucial issue in this case and requires deliberations by taking into account the pleadings, evidence and the settled legal position. It is an admitted fact that petitioner was engaged in the year 1999 and her services were regularized also in the year 2015 and now in the year 2020 she stands retired from the job. The only fact liable to be adjudicated in this case is whether fictional breaks given to her in between 1999 to 2007 liable to be condoned as the instances of unfair labour practices? In other words, whether the petitioner was subjected the fictional breaks in between 1999 to 2007 by the respondent and workmen junior to her been given work for the entire years or not. This limited controversy needs to be resolved on the basis of the material available on the records. The petitioner has appeared as PW1 in the witness box and sworn her affidavit Ext.PW1/A and Engineer J.P. Naik has appeared as RW1 and his affidavit is Ext. RW1/A. Both these statements are conclusive for just decision of the case. So far as Shri J.P. Naik's statement is concerned, he has made very crucial admissions in favour of the petitioner and she has been benefited to establish her case. He has admitted that workmen shown in para no.3 of the affidavit of the petitioner Ext.PW1/A are junior to her. He has admitted in clear terms that fictional breaks were given to the petitioner, whereas, no fictional breaks were given to her juniors. It is not clear that as to on which basis such a statement was made by this responsible officer. It shows that intentional fictional breaks were given to the petitioner whereas, the juniors were not given any breaks during the same period. He has again admitted that such fictional breaks were given to the petitioner till 31.8.2007. This responsible officer of the respondent department has thus demolished the entire defence of the respondent as pleaded in the reply. The respondent has infact taken up the plea that the petitioner was herself casual in her attendance and she used to remain

absent time and again. The further case of the respondent is to the effect that for these reasons she could not complete 240 days in each calendar year till the year 2007. It was infact for this officer to support this defence of the respondent but he made crucial admissions in favour of the petitioner and admitted that she was given fictional breaks till the year 2007 and juniors were not subjected to same treatment. Thus Shri J.P. Naik (RW1) supported the case of the petitioner rather than the respondent. Even otherwise, the onus was upon the respondent to establish that petitioner was a habitual absentee and she used to remain absent of and on till the year 2007. No such evidence was led on the part of the respondent. In case, the department was conscious of the fact that petitioner was in the habit of absenting herself, she could have been asked to explain her position in between. No explanation regarding the absence of the petitioner was called for by the officers of the department during the period in between 1999 to 2007. No office note has been produced to show that the officers of the department have at any time observed the fact that the petitioner was in the habit of remaining absent without any cause. The respondent department has thus not prepared any record in order to defend the department during any unwanted litigation. When no such evidence has been led by the respondent, the statement of petitioner which is duly supported by documents particularly the mandays chart showing the working days of the petitioner below 240 till the year 2007, and the evidence to the effect that workmen junior to her have worked for more than 240 days in each calendar year, the petitioner has been able to establish her case. The case of the petitioner further got strengthened by statement of Shri J.P. Naik (RW1) when he admitted that petitioner was subjected to fictional breaks, whereas, juniors to her were not subjected to such practice. Thus, from the statement of the petitioner coupled with the admission made by RW1 Shri J.P. Naik it stands established that petitioner was subject to unfair labour practices in between 1999 to 2007 and her juniors were not subjected to such practices as a result of which the junior workmen were regularized prior in time but services of the petitioner could be regularized in the year 2015 when she completed continuous eight years services with minimum 240 working days in each calendar year. Had the petitioner been not subjected to such unfair labour practices she would have completed eight years period in the year 2007 or 2008, as the case may be. She would have become entitled for the benefits of the regularization policy much earlier than she was actually regularized and thus she put to prejudice and loss for no fault on her part.

9. Since it has been held aforesaid that the fictional breaks were given to the petitioner in between 1999 to 2007 as a matter of unfair labour practices whereas, her juniors were given work for more than 240 days in each calendar year, therefore, the petitioner is entitled for the relief as claimed by her. It is therefore, held the fictional breaks were given to her as instances of unfair labour practices and these breaks are liable to be condoned and the period of breaks has to be considered towards the continuity and seniority. In other words, the petitioner is held to have worked for minimum 240 days in each calendar year from 1999 to 2007. She is held entitled for seniority and continuity in services for all the services benefits in such a manner as if no fictional breaks were given to her in between 1999 to 2007. Issue no.1 is decided accordingly.

Issue No. 2

10. No evidence has been led on this issue specifically by the respondent. There is no delay in the matter which could be termed as inordinate as the petitioner was subjected to unfair labour practices till the year 2007 she raised the demand in the year 2008 itself and reference was received from the appropriate Government. The petitioner is labourer and she can not be expected to raise the issue at once. It is to be remembered that no worker/labourer can gather the courage to fight against the institution from where they are earning their bread and butter. Being temporary and daily wage workers, such workers always have a sense of insecurity of being thrown out of the work at the mercy of the employer. In the aforesaid background, the court has examine her case liberally and there is no delay in approaching the court as she was always working with the respondent and could gather the courage in the year 2007 on finding that she has been put to

prejudice when workmen junior to her were regularized prior to her. Thus there is no delay in the matter which could be treated as fatal for the petitioner. This issue is held against the respondent.

ISSUE No.3

11. Since no evidence led by the respondent therefore this issue is held against the respondent.

RELIEF

12. In view of the above, the claim petition is partly allowed. The breaks period i.e. w.e.f. year 1999 to 31.8.2007 is hereby condoned and this period shall be treated towards her seniority and continuity in service. So far as back wages are concerned, she is held entitled for a sum of Rs.75000/- as lump sum for the back wages for the break periods. In order words, it is held that the petitioner shall be presumed to have worked for minimum 240 days in each calendar year commencing from 1999 to 2007. The rest of the consequences of the aforesaid findings of this court shall follow and the respondent department shall act to implement the same accordingly. Parties are left to bear their costs.

13. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 15th day of June, 2023.

Sd/-
(HANS RAJ),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-**INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No.	:	547/2016
Date of Institution	:	23-8-2016
Date of Decision	:	21-06-2023

Shri Raj Kumar s/o Shri Lekh Chand, r/o Village and Post Office Purthi, Tehsil Pangi, District Chamba, H.P. . .*Petitioner* .

Versus

The Senior Executive Engineer, Pangi Valley, Electrical Division, HPSEB Limited, Killar, Tehsil Pangi, District Chamba, H.P. . .*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the petitioner : Sh. Gaurav Sharma, Ld. Adv.

For the respondent : Sh. Madan Rawat, Ld. Adv.

AWARD

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short).

"Whether alleged termination of services of Shri Raj Kumar s/o Shri Lekh Chand, r/o Village and Post Office Purthi, Tehsil Pangi, District Chamba, H.P. w.e.f. 21.04.1996 by the Senior Executive Engineer, Pangi Valley, Electrical Division, HPSEB Limited, Killar, Tehsil Pangi, District Chamba, H.P., who had worked on daily wages beldar and has raised his industrial dispute after more than 16 years vide demand notice dated 21.12.2012, without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view of delay of more than 16 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

2. The case of the petitioner, in brief, is to the effect that he was engaged as daily paid beldar in respondent Board in May, 1987 and he worked as such till August, 1996 and completed nine years of continuous service. In September 1997 his services were terminated without serving any notice. Violation of Section 25-F took place in his matter as no notice was served upon him and no compensation was paid to him. Workmen junior to him namely Shri Mossam Deen, Shri Desh Raj, Shri Kartar etc. were retained and his (petitioner's) services were terminated without following the process of law. Fresh hands were also engaged and he was not given priority at that time. The petitioner approached the respondent Board time and again and requested to reinstate his services but nothing was done despite of the fact that there was no shortage of funds and work with the respondent. On these averments petitioner has prayed for his reinstatement with all benefits.

3. The respondent has resisted and contested the claim and submitted that petitioner was infact engaged as a casual labourer on daily wage basis w.e.f. May, 1987 and he worked as such till 1996 where after he himself left the work. He had never completed 240 days in any of the calendar year and his services were never terminated as he was himself abandoned the work, hence he was not entitled for any relief.

4. No rejoinder was filed by the petitioner. From the pleadings of the parties and language of the reference, following issues were framed for determination on 04.10.2019:—

1. Whether the termination of the services of the petitioner w.e.f. 21-04-1996 by the respondent is/was illegal and unjustified, as alleged? . .*OPP.*

2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . .*OPP.*

3. Whether the petitioner has no cause of action and locus standi to file the present petition, as alleged? . .*OPR.*

4. Whether the petitioner has not come to the Court with clean hands and has suppressed the material facts, as alleged? . .*OPR.*

5. Whether the petition is time barred, as alleged? . .*OPR.*

Relief.

5. I have heard learned Counsel for the parties at length and considered the material on record.

6. For the reasons to be recorded hereinafter, the findings of this Court on the above issues are as under:—

Issue No. 1 : Decided accordingly

Issue No. 2 : Decided accordingly

Issue No. 3 : No

Issue No. 4 : No

Issue No. 5 : Yes

Relief : Petition is **partly allowed** awarding lump sum compensation of □75,000/- per operative portion of the Award.

REASONS FOR FINDINGS

Issues No.1 and 5

7. Both these issues are taken up together for sake of convenience and to avoid repetition of facts and evidence.

8. The claim has to be decided in accordance with the terms of the reference. As per the terms of the reference the services of the petitioner were allegedly terminated on 21.4.1996 without following the process of law. It is for this court to examine this aspect of the matter. The mandays chart of the petitioner has been tendered on record as Ext.RW1/B and as per this document the petitioner has worked till 20.4.1996 with the respondent. It is clear from this document that the petitioner was engaged in the year 1990 vide muster roll no.9. The petitioner in support of his case has filed on record some casual cards issued in his name as Exts.P3 to P20. Ext. P3 shows that the petitioner has worked for 28 days and he was paid 18 rupees. This casual card pertains to November and December 1987. Ext. P4 pertains to the month of December and January. Similarly other casual cards for the year 1988 etc. have also been filed. The mandays chart shows that petitioner has worked on muster roll from 10 May 1990. The mandays chart also can not be said to be incorrectly prepared as this petitioner has worked on casual cards prior to may 1990 and not on the muster roll. This fact is otherwise not very relevant for the purpose of the present controversy. It is an admitted fact that since Pangi is remote and hard area and therefore, the Government of Himachal Pradesh has reduced the minimum number of working days to 160 instead of 240 in a calendar year to seek the benefit of section 25F. There is a notification to this effect and both the parties do not dispute this aspect of the matter. It is for the court to examine that whether the petitioner has worked for minimum 160 days in a calendar year before his services were terminated as claimed by him. The petitioner has not filed any other document in support of this plea. The respondent has filed and proved the mandays chart which shows that he has worked in the year 1996 for 29+20 days i.e. 49 days. When the number of days are counted from April, 1996 in reverse order for preceding 12 calendar months it becomes clear that the petitioner has worked for

214 days. Since the petitioner has worked for more than 160 days in the preceding 12 calendar months of his termination, therefore, there was a requirement of notice under Section 25-F of the Act, in case, his services were to be terminated by the respondent.

9. In the case in hand, since the respondent has taken the plea that the petitioner has left the work at his sweet will and his services were never terminated, therefore, the onus is upon the respondent to establish this plea. The respondent has not led any cogent and convincing evidence to establish the plea of abandonment. No notice was issued to the petitioner in case he was absenting himself from the work. No explanation was called for. There is no material on the record that to prove that the matter of the absence of the petitioner was taken up by the Senior Executive Engineer on administration side and giving an opportunity to the petitioner and thereafter a satisfaction was recorded to the effect that the petitioner was not willing to the work despite of being called time and again. Had any such exercise been undertaken by him and such document prepared by him would have become material to prove the plea of abandonment as raised by the respondent. Since no such document has been placed on the record, therefore, the plea of abandonment is not established. It is also settled that once the plea of respondent regarding abandonment fails, the ultimate presumption goes that the services of the petitioner were terminated. In this case, the petitioner has not only pleaded but has also spoken on oath that his services were terminated without following the process of law. In such a situation a plea of abandonment fails and it is held that the services of the petitioner were terminated without following the conditions mentioned in Section 25-F of the Act.

10. The petitioner has specifically pleaded that workmen junior to him were retained and his services were terminated. He has even named some of the workmen who were his junior and they were retained. Even if it is presumed for a while that the petitioner has absented himself from the job yet it was the duty of the respondent to have called him back, as aforesaid, and apprise him of the right of 'first come last go'. No such exercise was undertaken by the respondent and therefore, violation of Section 25-G of the Act took place as junior to the petitioner were retained and services of the petitioner were terminated. Even Engineer Santosh Kumar in his cross-examination has admitted that workmen junior to the petitioner have been regularized. He has explained that they were regular and punctual in their duties and fulfilled the criteria for regularization. Once junior workmen to the petitioner were working at the time when petitioner was absenting himself it was the duty of the respondent to at least call the petitioner back and apprise him of his right of 'first come last go'. Had he been apprised of the fact that in case any termination was done he was to be terminated last and his juniors first. There was possibility that he (petitioner) would have come back to work. Had the petitioner been apprised of the fact in case of regularization of services takes place he was to be regularized first in time to his junior. Since the respondent has not discharged the duty therefore violation of Section 25-G has also taken place in this case.

11. Although the petitioner has been able to establish that there were violation of Sections 25-F and 25-G of the Act yet he has raised demand after a long period of 16 years and there is no explanation on his part for not raising demand at earliest. The law is well settled that the workman can not be permitted to sleep over his rights for years together. It is settled law that a workman who sleeps over his right for years together can not claim reinstatement but the relief can be molded by the court and compensation instead of reinstatement can be granted by taking into account all the relevant facts and circumstances.

12. In the case in hand since the petitioner has raised the demand after more than 16 years therefore, he is not entitled for the relief of reinstatement. Taking into account the number of years passed in between, it will be appropriate and just that the petitioner is held entitled to receive

compensation to the tune of □75,000/- in lieu of his reinstatement and other consequential benefits. Issues no.1 and 5 are decided accordingly.

Issue No. 2

13. In view of the above discussion the petitioner is held entitled for compensation to the tune of □75,000/- (Rupees seventy five thousand only), hence this issue is decided accordingly.

Issues No. 3 & 4

14. In view of the aforesaid discussions on the issues above, the petition is maintainable, petitioner has the cause of action and locus standi as well and he has approached the court with clean hands and he had also not suppressed any material facts from the court, hence both these issues are decided in negative.

RELIEF

15. In view of my discussion on the above issues, it is held that though there had been violation of Sections 25-F and 25-G of the Act in this case but the petitioner had raised demand after a gap of more than 16 years and his claim for reinstatement has therefore, been vitiated by delay and laches, hence, the reinstatement and other consequential benefits can not be granted in his favour but he is held entitled for compensation to the tune of □75,000/- (Rupees seventy five thousand only), which would be paid within four months by the respondent from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 6% per annum on the said amount from the date of award till the date of its realization. Parties are left to bear their costs.

16. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 21st day of June, 2023.

Sd/-
(HANS RAJ),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-**INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 101/2017

Date of Institution : 28-3-2017

Date of Decision : 22-6-2023

Shri Prem Prakash s/o Shri Jogi Ram, r/o Village Mohanpur, P.O. Kotha, District Chamba, H.P. . .*Petitioner* .

Versus

The Project Manager, M/s Batot Hydro Power Project Ltd., Working Office Upper Julakhari, C/O Shri Surender Shekhari, Tehsil & District Chamba, H.P. . .*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the petitioner : Sh. Akshay Jaryal, Ld. Adv.

For the respondent : Sh. Rajinder Guleria, Ld. Adv.

AWARD

The petitioner has filed this direct claim under Section 2-A Sub-Section (2) & (3) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) against respondent.

2. The case of the petitioner as made out from the claim petition is to the effect that he was engaged as storekeeper by group companies initially in February, 2008 and till May, 2010. Thereafter he was employed as storekeeper from 1 June 2010 to 16 June 2016 in group of companies Greenweiz Projects Limited and Karma Energy Limited to manage the store in group hydro power projects in Chamba. The petitioner served the company to their satisfaction and his services were also confirmed. Later on, he was victimized under political pressure and his services were terminated on the ground of financial crises. In the month of December 15 and January 2016 fresh hands named in para no.3 were engaged. Even the junior workmen were retained and no reasons were disclosed while disengaging the services of the petitioner hence, the petitioner was entitled for the relief of reinstatement with all consequential benefits.

3. The respondent has resisted and contested the claim on the plea of maintainability, locus standi of the petitioner and estoppels. The initial engagement of the petitioner is admitted and equally admitted is his subsequent engagement as storekeeper. The case of the respondent is to the effect that since the hydro projects were not performing well and they were suffering heavy losses hence, the group was restructured in order to reduce the costs. The petitioner, other workmen and engineers were given option to resign but the petitioner did not resign from his services were therefore, terminated after fully following the provisions of the Act and terms and conditions of the appointment letter. The respondent has denied engagement of fresh hands in the same capacity. It is explained that though new person were engaged yet none was engaged against the post of store keeper and those who were engaged were technical experts and their job could not have been performed by ordinary workmen. The salaries of all these persons were also to be borne by three projects. Other allegations are denied and it is submitted that petitioner has no case on merits hence, the same be dismissed.

4. The petitioner has filed rejoinder and reaffirmed the averments so made in the petition and denied those made in the reply.

5. From the pleadings of the parties and language of the reference, following issues were framed for determination on 25 August 2022:—

1. Whether act of termination of services of the petitioner w.e.f. 17-01-2016 by the respondent is/was illegal and unjustified, as alleged? . .*OPP.*

2. If issue no.1 is proved in affirmative, to what relief, the petitioner is entitled to? . .*OPP.*

3. Whether the claim petition is not maintainable, as alleged? . .*OPR.*

4. Whether the petitioner has no locus standi to file the claim, as alleged? . .*OPR* .

5. Whether the petitioner is estopped from filing the claim petition by his act and conduct, as alleged? . .*OPR.*

Relief.

6. I have heard learned Counsel for the parties at length and considered the material on record.

7. For the reasons recorded hereinafter, the findings of this Court on the above issues are as under:—

Issue No.1 : Negative

Issue No.2 : Negative

Issue No.3 : No

Issue No.4 : No

Issue No. 5 : No

Relief : Petition is **dismissed** per operative portion of the Award

REASONS FOR FINDINGS

Issues No.1 & 2

8. Both these issues are taken firstly for the sake of convenience.

9. The very first question that arises in this case is regarding the fact whether the compliance of Section 25-F of the Act was made by the respondent in this case or not. The respondent has led evidence and examined Shri Vinay Kalra, AGM of the respondent as RW1. This witness has sworn his affidavit Ext.RW1/A. He has also tendered on record various other documents and one document that is very important for the purpose of this case is Ext.RW1/S. As per this document, the calculation of the wages was made by the respondent as per the provisions contained in Section 25-F of the Act and a sum of Rs.59192/- was calculated as the amount payable to the petitioner on his termination. This amount is said to have also been paid to the petitioner and document to prove this fact is Ext.RW1/Q. This amount was remitted in the saving bank account of the petitioner. It is therefore, very much clear that when the services of the petitioner were terminated the amount of compensation was calculated on behalf of the respondent as per the provisions of Section 25-F of the Act and the same was paid accordingly. The petitioner has appeared as PW1 in the witness box and during his cross-examination he admitted that one month notice was served upon him on December 17, 2015. He admitted that company has also paid and cleared his dues. This fact regarding the issuance of the notice upon the petitioner has been proved by the respondent by placing copy of the notice Ext. RW1/F on the record. This is again compliance of Section 25-F of the Act and, it can, therefore, be not be said that the services of the petitioner have been terminated without following the provisions of law particularly section 25 F. The petitioner has thus failed to make out a case that his services were terminated without complying with the provisions contained in Section 25-F of the Act. Since he has not pleaded and proved on the record the fact that there were other workmen junior to him and engaged as store-

keeper and those workmen were not terminated by the respondent, therefore, it is also proved that he was the junior-most and whenever the respondent desired to effect retrenchment among the workmen, he being the junior-most was to be terminated first

10. When the claim petition is carefully examined, it is clear from para no.3 of the same that petitioner has infact alleged violation of Sections 25-G and 25-H of the Act and he has named as many as eight persons, who according to him were engaged after his termination. It is also his case that some of them were junior to him and they were also retained. The petitioner has led evidence and his affidavit Ext. PW1/A which is nothing but replica of the petition. The petitioner has also placed on the record documents appointment letters Ext.PW1/B to Ext. PW1/E. He has also placed on the record mandays chart and seniority list Ext. Ext.PW1/F and Ext.PW1/G. Even perusal of this seniority list Ext.PW1/F shows that there was only one storekeeper with the respondent and there was no other storekeeper. In this situation, there is no question of any junior storekeeper. The petitioner was subjected to cross-examination and he again admitted that the workmen shown in para no.3 of the claim petition were engaged in a common transmission line and common poling station purposes. He has clearly admitted that the workmen engaged on the technical side and they were also experienced in the aforesaid work. These admissions are again very crucial to prove that the workmen engaged in the year 2015 and 2016 are from technical side and they were not storekeepers. A store can be managed by an ordinary workman whereby a technical work can be done only by a technical expert and therefore, non technical workman can not to do the same. There is no parity between a technical worker and storekeeper. It is not proved on the record by the petitioner that any storekeeper was engaged after his termination or in the year 2015 and 2016 by the respondent. When such is the position, the petitioner can not take the plea that provision contained in Section 25-G of the Act was violated by the respondent and he was not given preference over others when the need for re-engagement of the workmen arose. Had any store-keeper been engaged after the termination of the services of the petitioner, the petitioner could have said that he should have been given priority in compliance to the provision contained in section 25 H of the Act. Since it is not the case of the petitioner, again violation of Section 25-G of the Act is not made out.

11. The petitioner has although alleged that violation of Section 25-H of the Act was caused by the respondent but he has not led any evidence to prove this fact. He has not come up with the case that three four storekeepers were engaged by the respondent and some of them were junior to him. It is also not his (petitioner's) case that junior store-keeper were retained whereas, his services were terminated. Since there was only one storekeeper and his services were terminated by following the provisions contained in Section 25-F of the Act, and no fresh hand was engaged to look after the work of store-keeper, the petitioner can not contend that violation of Section 25-H of the Act has taken place in this case. The respondent has also led documentary evidence which is not very material. Ext. RW1/B is copy of the writ petition filed by the petitioner before Hon'ble High Court in the year 2016. This document has no connection with the present controversy. Ext. RW1/C is the appointment letter of the petitioner as a storekeeper in Cleanweiz Project Limited. Ext. RW1/D is his transfer letter to Karma Energy. Ext.RW1/E is again another transfer letter, Ext.RW1/F is a notice of termination which the petitioner had admitted to have received while he was cross-examined. Ext. RW1/G is a notice served by him upon the manager of respondent company and there is nothing important in this document which could be used for the purpose of this case. Ext.RW1/H is reply to the notice, Ext.RW1/J is application under Rule 2 before the Hon'ble High Court and Ext.RW1/K another application for interim relief before the Hon'ble High Court. These documents have no relevance for the present case. Ext. RW1/L is power of attorney executed in favour of Mrs. Vinay Kalra who has appeared as RW1 in this case. Ext.RW1/M to Ext.RW1/O are the copies of orders of Hon'ble High Court passed in Writ Petition No.136/2016 and not relevant for the present reference. Ext.RW1/P is termination letter of the petitioner and Ext.RW1/Q and Ext.RW1/S are documents pertaining to payment of retrenchment compensation to

the petitioner and other dues in his saving bank account and these documents have already been discussed hereinabove. Since there was only one post of storekeeper and there was neither any junior to the petitioner working as storekeeper nor any fresh hand has been engaged as storekeeper the violation of the provisions of Sections 25-G and 25-H of the Act is not established in this case. Similarly, violation of Section 25-F of the Act is also not established for the reason discussed hereinabove and, the petitioner is held not entitled to any relief as claimed by him. Hence, issue no. 1 and are decided in negative.

Issues No. 3, 4 & 5:

12. In view of the aforesaid discussions on the issues no.1 and 2 the petition is maintainable, petitioner has the cause of action and locus standi to file the claim. There can not be any estoppels against the petitioner as such plea is not available to the respondent in such like cases, hence all these issues are decided in negative.

RELIEF

13. In view of my above discussions, the present claim petition fails and is accordingly dismissed. Parties are left to bear their own costs.

14. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 22nd day of June, 2023.

Sd/-
(HANS RAJ),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-**INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No.	:	136/2017
Date of Institution	:	21-6-2021
Date of Decision	:	30-6-2023

Smt. Shakuntla Devi w/o Shri Manoj Kumar, r/o VPO Chharol, Tehsil Sadar, District Bilaspur, H.P. through Shri B.S. Verma, Vice President, INTUC, H.P. State Committee, Bilaspur Himachal Pradesh. . .*Petitioner* .

Versus

1. The Block Medical Officer, Sadar Block Markand, District Bilaspur, H.P.
2. The Medical Officer, PHC Chharol, District Bilaspur, H.P. . .*Respondents* .

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the petitioner	:	Sh. B.S. Verma, Ld. Adv.
For the respondent(s)	:	Sh. Abhay Gupta, Ld. Dy.DA

AWARD

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short).

"Whether termination of the services of Smt. Shakuntla Devi w/o Shri Manoj Kumar, r/o V.P.O. Chharol, Tehsil Sadar, District Bilaspur, H.P. through Shri B.S. Verma, Vice President, INTUC, H.P. State Committee, Bilaspur Himachal w.e.f. 19-10-2014 by (i) the Block Medical Officer, Sadar Block Markand, District Bilaspur, H.P. (ii) the Medical Officer, PHC Chharol, District Bilaspur, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employers/Management?"

2. The case of the petitioner as made out from the claim is that her services were engaged by the respondent department on 18.9.2014 as a workman and she worked with the respondent till 5.1.2015 when her services were terminated illegally without any speaking order. Since she has worked for more than 90 days preceding her termination therefore, her services could not have been terminated without following the provisions of the Industrial Disputes Act especially Section 25-F of the Act. The services of the petitioner were satisfactory and no notice was served upon her, hence, her termination was bad. It is alleged that respondent has violated the provisions of Sections 25-G and 25-H of the Act and therefore, her services be reinstated with all the benefits i.e. back wages, seniority etc.

3. The respondents have resisted and contested the claim and submitted that petitioner has worked only for 13 days w.e.f. 18.9.2014 to 30.9.2014 and a sum of Rs.650/- was paid to her through cheque. It is denied that She has worked for more than three months as claimed. It is explained that her appointment was made by the pharmacist, PHC Chharol under Rogi Kalyan Samiti as a part-time sweeper without the concurrence of the Chairman and such appointment was wrong and her services were terminated after 13 days and show cause notice was issued to the pharmacist for such an irresponsible act . Other allegations are denied and it is submitted that the petitioner has no case on the merits.

4. The petitioner has filed rejoinder and reaffirmed the averments so made in the petition and denied those made in the reply.

5. From the pleadings of the parties and language of the reference, following issues were framed for determination on 9.6.2022:—

1. Whether termination of the services of the petitioner w.e.f. 19-10-2014 by the respondent is/was illegal & unjustified, as alleged? . .*OPP.*

2. Whether the petition is not maintainable, as alleged? . .*OPR.*

Relief.

6. I have heard learned Counsel for the petitioner as well as learned Assistant District Attorney for the respondents at length and considered the material on record.

7. For the reasons recorded hereinafter, the findings of this Court on the above issues are as under:—

Issue No. 1 : No

Issue No. 2 : No

Relief : Petition is **dismissed** per operative portion of the Award.

REASONS FOR FINDINGS

Issues No.1 & 2

8. Both these issues being interlinked and interconnected are taken up together for determination, however, separate findings shall be recorded on these issues.

9. The petitioner has alleged violation of section 25-F by the respondents, but the requirements necessary for the violation of this provision are not made out from the material on the record. It is pleaded case of the petitioner that she has worked in between 18.09.2015 to 05.01.2015 and thereafter her services were terminated by the respondents without following the procedure required under the Act. This total period is not more than five months is fall and it is considerably short to 240 days in the preceding calendar year required to invoke the provision contained in section 25F of the Act. When such is the position, compliance of section 25-F was not required at all, hence there is no question of violation of the provision contained in section 25-F of the Act, even if the case of the petitioner is accepted as it is.

10. The case of the respondent is to the effect that a Resolution was passed by the Governing body of Rogi Kalyan Samiti on 28.05.2014, whereby it was resolved to engage a sweeper purely on outsource basis on the payment of Rs. 1500/- per month and the expenditure for the same was to be borne from Rogi Kalyan Samiti Funds. The further case of the respondent is to the effect that in accordance with this Resolution the appointment letter was issued in an unauthorized manner in favour of the petitioner by the then Pharmacist, and the petitioner has worked only for 13 days w.e.f 18.09.2014 to 30.09.2014 and a sum of Rs. 650/- was paid to her by way of cheque. The said pharmacist was also proceeded against departmentally by issuing him show cause for such Act.

11. It is important to notice here that both the parties to this claim have traveled beyond the scope of the Reference during the proceedings before this court. The petitioner has pleaded that she remained in the services of the respondents till 05.01.2015, and the respondent pleaded that the petitioner remained in the services only for 13 days w.e.f 18.09.2014 to 30.09.2014 and was paid a sum of Rs. 650 by way of cheque. The reference on the other hand, refers to the date of the termination of the services of the petitioner as 19.10.2014. Thus there are three different dates before this court regarding the alleged termination of the services of the petitioner. It is thus for this court to examine and appreciate the evidence led by the parties to decide this point. So far as the petitioner is concerned, she has led no cogent evidence on the record to prove the fact that she has worked till 05.01.2015 as a sweeper with the respondent. She has not led any evidence on the record to support her pleaded case except for her self serving statement.

12. When the evidence led by the parties is examined carefully, the plea raised by the respondents appears more probably then the self serving statement of the petitioner which is no supported by any document or admission on the part of the respondents' witness. The petitioner has claimed to have worked for more than 90 days, whereas, no evidence to this effect has been led by her. Her self serving statement is not sufficient to come to this conclusion. The case of the respondents is very specific and to the effect that she has worked only for 13 days with the respondent on outsource basis and a sum of Rs.650/- was paid to her as wages for these 13 days.

During her cross-examination she although denied that she had worked for 13 days, but she clearly admitted that she had received a sum of Rs.650/- only and that too by way of cheque towards her wages. She again tried to clarify the facts by deposing that she has worked more days. Her explanation is without any merits. When she has admitted that she was paid a sum of Rs.650/- through cheque, it is but natural that she has worked only for 13 days. Had she worked for more than three months the wages paid to her would have been much more than Rs. 650/-. She has not stated anywhere that some of her wages was not paid. It is also not her case that she was paid only for 13 days and payment for the rest of the days was pending. Thus the case of the respondent is more probable and the same is liable to be accepted.

13. It is case of the parties that petitioner was engaged under Rogi Kalyan SamitiScheme. The petitioner has placed on record a letter from Medical Officer PHC Chharol to BMO Bilaspur Ext. PA whereby it has been mentioned that in view of the meeting of RKS governing body under Chairmanship of Dr. A.K. Singh, BMO Markanda held on 28.5.2014 Smt. Shakuntla Devi (petitioner) was engaged as sweeper on outsource basis for @ Rs.1500/- per month for cleanliness of institution w.e.f. 18.9.2014. This letter shows that petitioner was engaged under RKS scheme and that too on outsource basis. Rogi Kalyan Samiti has no budget its own but the amount required to rune such a Samiti is collected by the Samiti itself and this amount disburses as salary etc. The respondents have alleged that one Shri Keshwa Nand Naryal the then Pharmacist had issued the letter Ext. PA in contravention RKS guidelines and show cause notice was served upon him. There are three letters being show cause letters Ext.RW1/B1, Ext.RW1/B2 and Ext. RW1/B3 on the record to prove this fact. These letters show that the act of this Keshwa Nand Naryal was not acknowledged by the CMO and show cause was issued to him. The petitioner has examined one Shri Anadi Gupta, Medical Officer as PW2 in the witness box and he has tendered on record resolution vide which it was decided that part-time sweeper be engaged on outsource basis. This document is not very material for the purpose of this case. Whether the engagement of the petitioner was regular or irregular, she can not be denied the benefits , if any available to her under Industrial Disputes Act.

14. The petitioner has alleged the violation of Section 25-F of the Act. As aforesaid, even if the case of the petitioner is admitted as it is, even then the provisions of Section 25-F of the Act is not attracted in this present case for the simple reason that she has not worked even as per her own claim for a period of minimum 240 days in the 12 calendar months preceding her termination. When the most important aspect of the matter is missing, she can not claim the benefit of the provisions contained in Section 25-F of the Act. Since she herself has come up with the case that she had worked only for three months then admittedly she has not worked for minimum 240 days and therefore, and violation of Section 25-F is not made out even after it is persumed for a while that her services were terminated without serving any show cause notice upon her.

15. The next violation the petitioner has alleged is that of Sections 25-G and 25-H of the Act. She has made a vague allegations in the claim that juniors were retained and fresh hands were also engaged by the respondent after termination of her services. The respondent has specifically denied the allegations. The petitioner has appeared as PW1 in the witness box and in her affidavit Ext.PW1/A she has pleaded the facts vaguely to the effect that junior were retained or fresh hands were engaged. She did not mention in her claim as well as in her evidence that any such fresh workman was engaged as a part-time sweeper. She was cross-examined wherein she denied that neither any workman was retained nor any fresh hand was engaged. Infact the petitioner has come up with a vague plea before the court. Since she claimed that junior was retained it was her duty to mention that particulars of such a junior workmen in her pleadings. She could have proved this fact by leading evidence. Similarly, in case any fresh hand was engaged she should have mentioned the name of the person in the pleadings and also spoken about him on oath. It was only thereafterthat the respondents were required to explain the position. When the petitioner has herself made a

vague pleadings and led vague evidence, the onus has not shifted upon the respondent to prove that junior workmen were retained or fresh hands were engaged. Dr. Surinder Singh Bawa appeared as RW1 in the witness box and sworn his affidavit Ext.RW1/A in which he has specifically pleaded that neither any junior was retained nor any fresh hand was engaged. He was subjected to cross-examination wherein a new suggestion was put to him that the petitioner has worked for two years. This suggestion was specifically denied by him. This suggestion on the face of it was wrong as the petitioner has herself pleaded that she had worked only for about 90 days with the respondent. This suggestion is, therefore, inconsequential. There is no searching cross-examination upon this Medical Officer to let him explain as to who was the junior to the petitioner and how he was retained. Similarly there is no cross-examination on this witness to explain as to who was the fresh hand engaged by the respondents after the termination of the services of the petitioner. When no such evidence has been led, the court can not presume that any junior was retained or any fresh hand was engaged and violation of Sections 25-G and 25-H of the Act took place. Had the petitioner named any workmen in her pleadings and evidence the court would have insisted the respondent to produce the records of those workmen and would have come way to a specific conclusion after examining the same. Since the petitioner has failed to prove all these facts, she has, therefore, herself failed to establish that there was violation of Sections 25-G and 25-H of the Act.

16. Thus when the violation of the provisions contained in of Sections 25-F, 25-G and 25-H of the Act is not established in this case, the petitioner is not entitled to any relief against the respondents as claimed by her. Issue no.1, is therefore, held against the petitioner. The petition is, however held as maintainable for the reasons that it has been filed in support of the reference. It is a different matter that the petitioner has failed to establish the claim, hence issue no.2 is held against the respondents.

RELIEF

17. In view of my above discussions, the present claim petition fails and is accordingly dismissed. Parties are left to bear their own costs.

18. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 30th day of June, 2023.

Sd/-
(HANS RAJ),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-**INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No.	:	548/2016
Date of Institution	:	23-8-2016
Date of Decision	:	30-6-2023

Smt. Jan Dei w/o Shri Karam Lal, r/o Village Chaloli, P.O. Dharwas, Tehsil Pangi, District Chamba, H.P. . .*Petitioner* .

Versus

The Assistant Commissioner (Dev)-cum- Block Development Officer, Development Block Pangi, District Chamba, H.P. . .*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the petitioner : Sh. O.P. Bhardwaj, Ld. Adv.

For the respondent : Sh. Gaurav Keshav, Ld. ADA

AWARD

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short).

"Whether alleged termination of services of Smt. Jan Dei w/o Shri Karam Lal, r/o Village Chaloli, P.O. Dharwas, Tehsil Pangi, District Chamba, H.P. during 01-10-1995 by the Assistant Commissioner (Dev)-cum-Block Development Officer, Development Block Pangi, Chamba, H.P., who has worked as beldar on daily wages basis and has raised her industrial dispute after 17 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period of 34, 63, 147, 230, 198, 77 and 141 days during years 1998, 1990, 1991, 1992, 1994 and 1995 respectively and delay of 17 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer/management?"

2. The case of the petitioner as made out from the claim is that she belongs to Pangi area of District Chamba, which is a remote area and declared as schedule tribe and hard area. The entire area remains cut for almost six months from rest of the country and the Government of Himachal Pradesh has prescribed 160 minimum days in each calendar year for invoking the provision contained in Section 25-F of the Act. According to her, she was initially engaged as a beldar in the year 1988 on muster roll by the respondent department and she worked till December 2005 with intermittent breaks. These fictional breaks were given to her for the reason that she could not complete 160 days in each calendar year and avail the benefits available under the law. Her services were orally terminated without giving her one month's notice or paying her compensation as per the rules. The petitioner approached the respondent time and again but she was put off, on one or other excuse by the respondent and the respondent thus violated the principle of 'last come first go' by retaining the juniors and terminating her services. Fresh hands were also engaged without giving her priority and preference. The petitioner has thus prayed for the relief of reinstatement with all other benefits.

3. The respondents have resisted and contested the claim on the ground that it is delayed by 17 years and has become stale, hence, the petitioner on the face of this inordinate delay was not entitled for any relief. On merits, the case of the respondent is to the effect that the petitoner was engaged on 9th May, 1988 as a daily paid labourer. It is denied that her services were terminated in the year 2005. The petitioner is said to have left the work at her own and no fictional breaks were ever given to her. She is said to have abandoned the work in October, 1995 and has raised issue

after 17 years. The allegations regarding violation of principle of 'last come first go' are denied and it is denied that fresh hands were engaged without giving preference to the petitioner. The petitioner is said to have never completed 240 days in any calendar year, and therefore, she was also not entitled for the relief under Section 25-F of the Act.

4. The petitioner filed rejoinder and reaffirmed the averments so made in the petition and denied those made in the reply.

5. From the pleadings of the parties and language of the reference, following issues were framed for determination on 01.11.2018:—

1. Whether the termination of the service of the petitioner by the respondent during 01-10-1995 is/was legal and justified as alleged? . .*OPP.*

2. If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? . .*OPP.*

3. Whether the claim petition is not maintainable in the present form? . .*OPR.*

4. Whether the claim petition is barred on account of delay and laches as alleged? . .*OPR.*

Relief.

6. I have heard learned Counsel for the petitioner as well as learned Assistant District Attorney for the respondent at length and considered the material on record.

7. For the reasons recorded hereinafter, the findings of this Court on the above issues are as under:—

Issue No.1	:	Decided accordingly
Issue No.2	:	Decided accordingly
Issue No.3	:	No
Issue No.4	:	Decided accordingly
Relief	:	Petition is **partly allowed** awarding lump sum compensation of Rs. 50,000/- per operative portion of the Award.

REASONS FOR FINDINGS

Issues No.1 to 4:

8. All these issues are taken together for discussion and decision for the sake of convenience and to avoid repetition of evidence, however separate findings shall be recorded on each issue.

9. The petitioner has led evidence and tendered her affidavit Ext.PW1/A. No other document has been placed by her on the record. The affidavit is replica of the claim. In the claim she has pleaded that she was disengaged in the year 2005 but in this affidavit she has stated on oath that her services were terminated in October 1995. The affidavit is in accordance with the reference whereas, the claim is not in accordance with the reference as date of disengagement has been

claimed as 2005, whereas, the reference shows that her services were terminated in the month of August 1995. The respondent, on the other hand, has examined Shri Surjeet Singh, the present BDO Pangi as RW1. He has tendered his affidavit Ext.RW1/A. He has also tendered copies of muster rolls as Ext.RW1/B1 to B33 and mandays chart Ext. RW1/C. The petitioner has nowhere pleaded in her claim that her mandays chart was wrongly prepared. She has also not stated on oath that her mandays chart was wrongly prepared. She has made an unsuccessfully attempt to cross-examine Shri Surjeet Singh, BDO Pangi (RW1) on this aspect and he has specifically denied that mandays chart had wrongly been prepared. The respondent has placed on record all the muster rolls pertaining to the petitioner as Ext.RW1/B1 to B33 and the petitioner has not pointed any variation between the entries in the muster rolls and the mandays chart. Thus the mandays chart can safely be relief upon for the purpose of this case. It is clear from this mandays chart that petitioner was engaged on 9.5.1988 initially and she worked for 34 days in the year 1988 and 63 days in the year 1989. She also worked in the year 1990 for 147 days and in 1991 for 230 days. In the year 1992 she worked for 198 days and did not work even for a single day in the year 1993. She was again engaged in the year 1994 and she worked for 77 days and in the year 1995 she worked for 141 days. The petitioner has worked for 141 days in the year 1995 i.e. from 1st May, 1995 to 31.10.1995. Prior to this, she worked in August 1994 only and there is gap of nine months in between. The court has to see as to whether the petitioner has worked for minimum 160 days in preceding 12 calendar months of her termination. The petitioner has since worked for five months only in the year 1995 therefore, the working days for the year 1994 can not be combined together with the working days of 1994 as number of months in this manner exceeds 12 calendar months. In the year 1995, she has worked for 141 days only and 141 working days are less 160 therefore, she has failed to meet the benchmark required to take the protection available under Section 25-F of the Act.

10. The petitioner has taken up the plea that her services were terminated by the respondent without following the process of law as required under the Industrial Disputes Act whereas, the respondent has pleaded that she was very casual in her attendance and she had herself left the work after April, 1997. In nutshell, the case of the respondent is to the effect that the services of the petitioner were never terminated. Once the respondent has taken up the plea that the petitioner has herself left the work, it is thus clear that the respondent has taken up the plea of abandonment of the work by petitioner. Once the plea of abandonment is taken by the employer, the entire onus to prove this plea is upon the employer. Abandonment has to be established by leading cogent evidence. It is settled law that whenever the employer takes the plea of abandonment of the work by workman it is for the employer to prove that the employer had taken all the steps required before concluding that the there was abandonment of the work by the workman. Absence from duty is a serious misconduct and in case any worker absents himself/herself for days together, it is the duty of employer to take action against him by conducting a domestic inquiry into the reasons of absence after giving the workman an opportunity of being heard. In case, it is proved during the inquiry that the abandonment was voluntarily act of the worker and he did not want to work at all, only then the plea of abandonment can sustained. In case, the steps are not taken by the employer to call back the workman apprising him/her of valuable rights available under the law the plea of abandonment is not established. Once the employer takes all these steps only then such employer can take the plea of abandonment of work by the workman and only then the court can accept such plea. In the case in hand, neither any notice was served upon the petitioner for her absence nor any inquiry was initiated into the reason of her absence and nor any findings of misconduct were given by the department before raising the plea of abandonment of job by the petitioner. All these facts are clear from the cross-examination conducted upon Shri Surjeet Singh, BDO Pangi (RW1). When such is the position, in case the petitioner was absenting herself from the work after April, 1995 onward the respondent could not have remained quite on this conduct of the petitioner but would have taken the steps to call her back. The Hon'ble High Court of Himachal Pradesh in **State of H.P. vs. Des Raj in CWP**

No.2041/2016 decided on 10.4.2023 was pleased to deal with a similar matter. It was observed in para no.11 of the judgment which reads thus:—

> **"……Termination of the services of the petitioner w.e.f. 1st November, 1999, was in fact preceded by the workman having put in more than 240 days in the calendar year 1999. This is a matter of record. In such like circumstance, the services of the petitioner could have been terminated by the department by following the procedure prescribed in Section 25(F) in the Industrial Disputes Act. Admittedly, this procedure was not followed at the time of the termination of services of the petitioner w.e.f. 1st November, 1999. The contention of the learned Deputy Advocate General that there was voluntary abandonment of the work by the petitioner is not substantiated from any material on record. In fact, learned Labour Court has correctly held that to demonstrate fact that the work stood abandoned by the workman on his own, the onus was upon the department to have had proved these facts. During the course of arguments, learned Deputy Advocate General could not draw the attention of this Court to any Exhibit from which it could be inferred that any notice etc. was issued by the department to the workman, mentioning therein that he had voluntarily abandoned the job w.e.f. 1st November, 1999 and that consequences would ensue. In the absence of there being any such material on record, the only inference that could have been drawn was that the services of the petitioner were indeed terminated by the department and that too, without following the provisions of Section 25(F) of the Industrial Disputes Act……"**
>
> **In the case in hand also since nothing was done by the respondent to call the petitioner back therefore the only inference that can be drawn is that her services were illegally terminated by the respondent w.e.f. 01.10.1995.**

11. The petitioner has alleged that the juniors were retained while her services were terminated. She has not named any junior workmen as junior who as per her was retained at her cost. There is no reference of any junior workmen in the affidavit of the petitioner. Since the petitioner has leveled the allegations it was for her to atleast prove this fact to the prima-facie level so that onus could be shifted upon the respondent. She has not chosen to name even a single workman who, as per her, was junior to her and was retained in the year 1995 while her services were terminated. When such is the position, the onus is not shifted upon the respondent, and therefore the petitioner has failed to prove the violation of Section 25-G of the Act.

12. It is further alleged that there has been violation of Section 25-H of the Act as fresh hands were engaged and she was not given priority preference. She has not named any workmen in her claim but while she filed affidavit she has named some workmen who according to her were engaged in the year 2007. When Shri Surjeet Singh was examined as RW1 he admitted that some workmen shown in para no.10 of the petition of the petitioner were engaged against the dates shown in the same. Infact, there is no mentioned of such person in para 10 of the affidavit and it appears that such admission has been bonafidely been made by Shri Surjeet Singh (RW1). When Shri Surjeet Singh, the present BDO Pangi was further cross-examined, he admitted that several workmen were engaged in the department after the petitioner and now their services have been regularized. This admission is very material and relevant for the purpose of this case. This responsible officer of the department has himself admitted in clear terms that after the petitioner several new workmen were engaged and regularized with the passage of the time which shows that once the services of the petitioner were terminated several workmen were engaged and they remained in active service and were regularized with the passage of the time. This crucial admission proves the violation of Section 25-H of the Act. It is therefore, clear from this admission that new workmen were engaged after the petitioner now they have been regularized. In case new

workmen were engaged after the termination of the services of the petitioner, it was duty of the respondent to give priority and preference to the petitioner as she was a senior workman of the department. Since the respondent has failed to prove the abandonment, therefore, it is presumed that the services of the petitioner were terminated by the respondent. Once the petitioner falls in the category of terminated workman, she had a right to be called firstly whenever fresh engagements were to take place, and since she was not called and re-engaged and fresh hands were engaged, therefore violation of Section 25-H of the Act is proved to have taken place in this matter.

13. The next question that arises for determination is when the respondent is proved to have violated the provision contained in section 25-H of the Act, then whether the petitioner is entitled for reinstatement or compensation. Although, the petitioner has been able to establish that there was violation of 25-H of the Act yet she has raised demand after a long period of 17 years and there is no explanation on her part for not raising demand at earliest. The law is well settled that the workman can not be permitted to sleep over his/her rights for years together. It is settled law that a workman who sleeps over his/her right for years together can not claim reinstatement but the relief can be molded by the court and compensation instead of reinstatement can be granted by taking into account all the relevant facts and circumstances. The Hon'ble High Court of Himachal Pradesh in series **CWP No.1149 of 2019 titled as Pritam Singh vs. The Executive Engineer** decided on 9.5.2023 was pleased to deal with a similar matter and it was held that if court finds that the dispute still exists through raised belatedly, it is always permissible for the court to take the aspect of the delay into consideration and mold the relief. It has further held that it is open for the court to either grant reinstatement with back wages or lesser back wages or grant of compensation instead of reinstatement.

14. In the case in hand since the petitioner has raised the demand after more than 17 years therefore, she is not entitled for the relief of reinstatement. Taking into account the number of years having passed in between, it will be appropriate and just to hold the petitioner entitled to receive compensation to the tune of □50,000/- in lieu of his reinstatement and other consequential benefits. The petition is maintainable, as it has been filed in support of the reference, hence issues no.1, 2 and 4 are decided accordingly, and issue no.3 is held in negative.

RELIEF

15. In view of my discussion on the above issues, it is held that though there had been violation of Section 25-G of the Act in this case but the petitioner had raised demand after a gap of more than 17 years and her claim for reinstatement has therefore, been vitiated by delay and laches, hence, the reinstatement and other consequential benefits can not be granted in her favour but she is held entitled for compensation to the tune of □50,000/- (Rupees fifty thousand only), which would be paid within four months by the respondent from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 6% per annum on the said amount from the date of award till the date of its realization. Parties are left to bear their costs.

16. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 30th day of June, 2023.

Sd/-
(HANS RAJ),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-**INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 277/2016

Date of Institution : 4-5-2016

Date of Decision : 30-6-2023

Smt. Leela Devi w/o Shri Sukh Ram, r/o Village Mahaliyar, P.O. Killar, Tehsil Pangi, District Chamba, H.P. . .*Petitioner* .

Versus

The Block Development Officer, Pangi, Tehsil Pangi, District Chamba, H.P. . .*Respondent* .

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the petitioner : Sh. O.P. Bhardwaj, Ld. Adv
Sh. Rajat Chaudhary Ld. Adv.

For the respondent : Sh. Gaurav Keshav, Ld. ADA

AWARD

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short).

"Whether alleged termination of services of Smt. Leela Devi w/o Sh. Sukh Ram, Village Mahaliyar, P.O. Killar, Tehsil Pangi, Distt. Chamba, H.P. during 4/1997 by the Assistant Commissioner (Dev)-cum- Block Development Officer, Pangi, Tehsil Pangi District Chamba, H.P. who had worked as beldar on daily wages basis only for 943 days from 1/5/1991 to 4/1997 and has raised her industrial dispute vide demand notice dated nil (received in the office of the Labour Officer Chamba on 29/5/2012) after more than 14 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period mentioned as above and delay of more than 14 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

2. The case of the petitioner as made out from the claim is that she belongs to Pangi District Chamba a remote area declared as schedule tribe and hard area. The entire area remains cut for almost six months from rest of the country and the Government of Himachal Pradesh has declared 160 minimum days in each calendar year for the purpose of Section 25-F of the Act. The case of the petitioner is to the effect that she was engaged on muster roll without any appointment letter in the year 1991 and she worked with the department till October 1997. She was given intermittent breaks with a view to defeat her valuable rights which would have accrued under the Act and her services were terminated without complying with the provisions contained in Section 25-F of the Act. She is a poor woman having no source of income and the respondent retained the junior workmen and violated the principle of 'last come first go'. Fresh hands were also engaged and she raised the demand by way of demand notice and in this manner the reference has been made before this court by the Appropriate Government. On these averments, the petitioner has prayed for her reinstatement with all consequential benefits.

3. The respondent has resisted and contested the petition on the ground of delay and maintainability. On merits, it is submitted that petitioner has worked in intervals and her services were never terminated. Rather she left the work at her own and she never fulfilled the criteria of 160 days in preceding 12 calendar months, hence, compliance of Section 25-F of the Act was not required. No junior was retained and no fresh hand was engaged and the petitioner left the services at her own. The workmen shown in para no.10 of the claim are said to have worked continuously, whereas, the petitioner abandoned the work. It is submitted that petitioner has not case on merits, hence the claim be dismissed.

4. The petitioner has filed rejoinder and reaffirmed the averments so made in the petition and denied those made in the reply.

5. From the pleadings of the parties and language of the reference, following issues were framed for determination on 30.11.2017:—

1. Whether the industrial dispute raised by petitioner vide demand notice dated nil qua her termination of service during April, 1997 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? . .*OPP.*

2. Whether termination of the services of petitioner by the respondent during April, 1997 is/was illegal and unjustified as alleged? . .*OPP.*

3. If issue No.2 is proved in affirmative, to what service benefits the petitioner is entitled to? . .*OPP* .

4. Whether the claim petition is not maintainable in the present form? . .*OPR.*

Relief.

6. I have heard learned Counsels for the parties at length and considered the material on record.

7. For the reasons recorded hereinafter, the findings of this Court on the above issues are as under:—

Issue No.1	:	Decided accordingly
Issue No. 2	:	Decided accordingly
Issue No. 3	:	Decided accordingly
Issue No. 4	:	No
Relief	:	Petition is **partly allowed** awarding lump sum compensation of Rs.75,000/- per operative portion of the Award.

REASONS FOR FINDINGS

Issues No.1 and 4:

8. Both these issues being interlinked and interconnected are taken up together for determination for the sake of evidence.

9. The petitioner has filed her affidavit Ext.PW1/A in which she has detailed all the facts pleaded by her in the claim. The respondent, on the other hand, has placed on record the mandays chart of the petitioner Ext.RW1/C and the muster rolls, out of which this mandays chart has been prepared, as Ext.RW1/B1 to Ext.B33. These documents have been tendered on the record by BDO Pangi Shri Surjeet Singh (RW1). He has sworn his affidavit Ext.RW1/A in the evidence. The petitioner has neither denied the correctness of the mandays chart nor the correctness of the muster rolls so placed on the record by the respondent, therefore, these documents being undisputed are liable to be relied upon as it is. The mandays chart is a very crucial document for the purpose of this case and a careful perusal of the same shows that the petitioner was engaged w.e.f. 1.5.1991 and she has worked till 30.4.1997. It is clear from this mandays chart that petitioner has worked every year with the respondent and there is no break of the year in between 1991 to 1997 though she has worked for different number of days every year. In the year 1991 she worked only for 48 days, in 1992 for 113 days and in 1993 for 205 days. Similarly she has worked for 145 days in the year 1996 and only for 17 days in the year 1997. The petitioner has taken up the plea that her services were terminated by the respondent without following the process of law required under the Industrial Disputes Act whereas, the respondent has pleaded that she was very casual in her attendance and she had herself left the work after April, 1997. In nutshell, the case of the respondent is to the effect that the services of the petitioner were never terminated. Once the respondent has taken up the plea that the petitioner has herself abandoned the work, it has taken the entire onus to prove this plea is upon itself. Abandonment has to be established by leading cogent evidence. It is settled law that whenever the employer takes the plea of abandonment of the work by workman it is for the employer to prove that the employer had taken all the steps required before coming to the conclusion that there was abandonment of the work by the workman. Absence from duty is a serious misconduct and, in case, any worker absents himself/herself for days together it is the duty of employer to take action against him by conducting a domestic inquiry into the reasons of absence after giving the workman an opportunity of being heard. In case, it is proved during the inquiry that the abandonment was voluntarily act of the worker and he did not want to work at all, only then the plea of abandonment can sustained. In case, steps are not taken by the employer to call back the workman at all and such a workman is not apprised of his valuable rights available under the law, the plea of abandonment does not sustain. After the inquiry aforesaid, it is the duty of the employer to record the finding of misconduct on account of absence. Once the employer takes all these steps only then the employer can take the plea of abandonment of work by the workman and only then the court can accept such a plea. In the case in hand, neither any notice was served upon the petitioner on her absence nor any inquiry was initiated into the reason of her absence and nor any findings of misconduct was given by the department before raising the plea of abandonment of job by the petitioner. All these facts are clear from the cross-examination conducted upon Shri Surjeet Singh, BDO Pangi (RW1). When such is the position, then in case the petitioner had been absenting herself from the work after April, 1997 onward the respondent could not have remained quite on this conduct of the petitioner but should have taken the steps to call her back. The Hon'ble High Court of Himachal Pradesh in **State of H.P. vs. Des Raj in CWP No.2041/2016** decided on 10.4.2023 was pleased to deal with a similar matter. It was observed in para no.11 of the judgment which reads thus:—

> **"……Termination of the services of the petitioner w.e.f. 1st November, 1999, was in fact preceded by the workman having put in more than 240 days in the calendar year 1999. This is a matter of record. In such like circumstance, the services of the petitioner could have been terminated by the department by following the procedure prescribed in Section 25(F) in the Industrial Disputes Act. Admittedly, this procedure was not followed at the time of the termination of services of the petitioner w.e.f. 1st November, 1999. The contention of the learned Deputy Advocate General that there was voluntary abandonment of the work by the petitioner is not substantiated from any material on record. In fact, learned Labour Court has correctly held that to**

demonstrate fact that the work stood abandoned by the workman on his own, the onus was upon the department to have had proved these facts. During the course of arguments, learned Deputy Advocate General could not draw the attention of this Court to any Exhibit from which it could be inferred that any notice etc. was issued by the department to the workman, mentioning therein that he had voluntarily abandoned the job w.e.f. 1st November, 1999 and that consequences would ensue. In the absence of there being any such material on record, the only inference that could have been drawn was that the services of the petitioner were indeed terminated by the department and that too, without following the provisions of Section 25(F) of the Industrial Disputes Act……"

In the case in hand also since nothing was done by the respondent to call the petitioner back therefore the only inference that can be drawn is that her services were illegally terminated by the respondent w.e.f. 30.4.1997.

10. In the aforesaid background it is for this court to examine whether there has violation of Section 25-F of the Act or not. The mandays chart again is a necessary document to deal with this plea. As per mandays chart, the petitioner has worked only 17 days in April, 1997 and in the year 1996 she has worked 145 days. If the working days for the year 1996 and 1997 are combined together it becomes to 145+17+162 days. The petitioner was supposed to work for total 160 days in a period of twelve calendar months preceding her termination which she has not worked as 162 work was done by her w.e.f. 1.1.1996 to 30.4.1997. In other words, the court was supposed to take the working days of the petitioner into consideration from May, 1996 onward as her services were terminated in April 1997. When the working days of the petitioner for January 1996 are excluded, the working days come much less to 160. When such is the position, the provisions of Section 25-F of the Act is not applicable to the present case as petitioner has not worked for minimum 160 days as was required before her termination, and therefore, she is not entitled to the benefit of Section 25-F of the Act. There was no requirement of one month's notice or salary under Section 25-F of the Act, hence, the violation of Section 25-F of the Act is not established.

11. The petitioner has further taken the plea that there has been violation of Section 25-G of the Act in this case as those workmen who were junior to the petitioner were retained and her services were terminated. Since this court has already observed hereinabove that only inference that could be drawn on the failure of the respondent to prove the plea of abandonment is that her services were terminated w.e.f. 30.4.1997. Therefore, the court has to examine whether any workman who are junior to the petitioner was retained at that time or not. The petitioner has named several workmen in her claim petition in para no.10. According to her, these workmen were engaged in the year 2007. The respondent has denied this fact and when the affidavit of Shri Surjeet Singh Ext.RW1/A is examined, he has named as many as five person out of whom first three were engaged in between 1995 to 1996 and last two were engaged in June 1997. Thus the first three namely Shri Prem Lal, Khem Raj and Kumari Rum Dei were engaged in the year 1996 when the petitioner was already in service as her services were terminated w.e.f. 30.4.1997. These workmen are thus junior to the petitioner. It is in the sworn affidavit of the petitioner tha since these workmen worked throughout, therefore, their services were not terminated. Affidavit of the witness of the respondent is not a simple document. This is a statement made on oath and it can be safely relied upon by the court. This statement made on oath by this Shri Surjeet Singh, BDO Pangi is good evidence that can be looked into against the respondent. Thus as per this affidavit Shri Prem Lal, Khem Raj and Kumari Rum Dei are junior to the petitioner and they were retained. Once this court has concluded that the services of the petitioner were terminated as the plea of abandonment has not been established, therefore, the only conclusion that can be drawn is that the juniors aforesaid Shri Prem Lal etc. were retained and services of the petitioner were terminated. Though the respondent has come up with the plea that petitioner has herself stopped coming to work after

April, 1997 yet the failure of the department to take action against her and give findings of misconduct on account to of absence from duties, has prejudicial the interest of the respondent. In case, the respondent takes the steps at the appropriate time to call back workman, the workman certainly can not take the plea that juniors were retained. The requirement of such a domestic inquiry is understandable for the reason that the basic concept of 'first come last go' has to be protected. Once there are juniors to the absentee worker, such an absentee workers has a right to be terminated after his juniors. In case this fact is brought to the notice by absenting workman there is possibility that he resumes his duties with immediate effect realizing the fact that he was senior and therefore, his service will be terminated only after his juniors are terminated first. In case employer takes all the steps at the time when the senior workman starts absenting from the work, and in, case employer records the findings of misconduct on the ground of absence, the senior workman can not later on take the plea of termination and the plea of abandonment as taken by the employer succeeds. In the case in hand also, since the juniors were retained and no steps were taken to call back petitioner and no findings were recorded regarding her misconduct therefore, it is presumed that the services of the petitioner were terminated and juniors were retained and violation of Section 25-G therefore took place. The petitioner in her affidavit has said regarding the fact that her services were terminated by retaining the juniors.

12. The petitioner has alleged that fresh workmen were also engaged and she was not given an opportunity to report to her duties but she has not led any specific evidence to this effect. She has neither named specifically those workmen who were engaged later in time nor she has succeeded to establishing the plea that workmen shown by her were engaged in the year 2007 and 2008 as Sh. Surjeet Singh, present BDO Pangi has sworn in affidavit to the effect that they were engaged in the year 1996 and 1997. There is no denial of this fact in the cross-examination of this witness and therefore, these workmen are proved to have been engaged by the respondent when the petitioner was also in service and violation of Section 25-H of the Act is not established.

13. The next question that arises for determination whether the petitioner is entitled for reinstatement or compensation. Although the petitioner has been able to establish that there were violation of 25-G of the Act yet she has raised demand after a long period of 14 years and there is no explanation on her part for not raising demand at earliest. The law is well settled that the workman can not be permitted to sleep over his/her rights for years together. It is settled law that a workman who sleeps over his/her right for years together can not claim reinstatement but the relief can be molded by the court and compensation instead of reinstatement can be granted by taking into account all the relevant facts and circumstances. The Hon'ble High Court of Himachal Pradesh in series **CWP No.1149 of 2019 titled as Pritam Singh vs. The Executive Engineer** decided on 9.5.2023 was pleased to deal with a similar matters and it was held that if court finds that the dispute still exists through raised belatedly, it is always permissible for the court to take the aspect of the delay into consideration and mold the relief. It has further held that it is open for the court to either grant reinstatement with back wages or lesser back wages or grant of compensation instead of reinstatement.

14. In the case in hand since the petitioner has raised the demand after more than 14 years therefore, she is not entitled for the relief of reinstatement. Taking into account the number of years passed in between, it will be appropriate and just that the petitioner is held entitled to receive compensation to the tune of □75,000/- in lieu of his reinstatement and other consequential benefits. Issues no 1 and 4 are decided accordingly.

Issue No.3

15. In view of the above discussion the petitioner is held entitled for compensation to the tune of □75,000/- (Rupees seventy five thousand only), hence this issue is decided accordingly.

Issue No. 4

16. In view of the aforesaid discussions on the issues above, the petition is maintainable as it has been filed in support of the reference, hence this issue is decided in negative.

RELIEF

17. In view of my discussion on the above issues, it is held that though there had been violation of Section 25-G of the Act in this case but the petitioner had raised demand after a gap of more than 14 years and her claim for reinstatement has therefore, been vitiated by delay and latches, hence, the reinstatement and other consequential benefits can not be granted in her favour but she is held entitled for compensation to the tune of □75,000/- (Rupees seventy five thousand only), which would be paid within four months by the respondent from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 6% per annum on the said amount from the date of award till the date of its realization. Parties are left to bear their costs.

18. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 30th day of June, 2023.

Sd/-
(HANS RAJ),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-**INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 877/2016

Date of Institution : 7-12-2016

Date of Decision : 30-6-2023

Ms. Toti alias Sonu Kumari d/o Shri Mangal Chand, r/o Village Thandal, P.O. Purthi, Tehsil Pangi, District Chamba, H.P. . .*Petitioner.*

Versus

The Divisional Forest Officer, Pangi Forest Division, Killar, District Chamba, H.P. . .*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the petitioner : Sh. O.P. Bhardwaj, Ld. Adv.

For the respondent : Sh. Gaurav Keshav, Ld. ADA

AWARD

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short):—

"Whether alleged termination of the services of Ms. Toti alias Sonu Kumari d/o Shri Mangal Chand, r/o Village Thandal, P.O. Purthi, Tehsil Pangi, District Chamba, H.P. during August, 2002 by the Divisional Forest Officer, Pangi Forest Division, Killar, District Chamba, H.P. who has worked as beldar on daily wages basis and has raised her industrial dispute vide demand notice dated nil received in Labour Office Chamba on 21-08-2015 after delay of more than 13 years, without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period from 1995, 1996, 1997 and 2002 for 31, 183, 59 and 48 days respectively and delay of more than 13 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

2. The case of the petitioner as made out from the claim is that she was engaged as a daily wage beldar by the respondent without appointment letter in the year 1998 in Forest Range Purthi and she worked regularly till October 2002 and her services were engaged and disengaged from time to time so that she could not complete 160 working days within a period of 12 calendar months in any of the aforesaid years. No casual card or attendance card was issued in her favour. Her services were terminated without issuance of one month's notice and in violation of Section 25-F of the Act. The petitioner approached the department time and again after her termination but nothing was done by the respondent to accommodate her despite of the fact that sufficient work and funds were always available. The workmen junior to the petitioner were retained and regularized with the passage of the time and the principle of 'last come first go' was violated. The petitioner has named several workmen in para no.10 of the claim and submitted that these workmen were retained and her services were terminated and violation of Section 25-G of the Act also took place. Few of workmen were freshly engaged and thus violation of Section 25-H of the Act also took place as she was not given the priority and preference over them. She remained unemployed throughout and raised demand where after the present reference was made by the appropriate Government. It is submitted that the claim of the petitioner be allowed and relief of her reinstatement with other consequential benefits be granted to her.

3. The respondents have resisted and contested the claim and submitted that petitioner was engaged from May, 1995 till 2002 as casual labourer and she left the work at her own and did not turn up for the work. It is denied that fictional breaks were given to the petitioner as alleged by her. As per the respondent, the petitioner had never completed 160 days in any of the calendar year, and therefore, she can not invoke the provision contained in Section 25-F of the Act. Only those workers who were working continuously and had completed 8 years service in each calendar year were regularized as per the regularization policies of the State of Himachal Pradesh, whereas, the petitioner never fulfilled the requisite criteria hence, she was not entitled to any relief. It is submitted that the claim is delayed and has become stale with the passage of time. It is denied that any junior was retained or any fresh hand was engaged as claimed by her. In reply to para no.10, it is submitted that respondent has engaged only those fresh hands who had filed the claim before the courts and Awards were passed in their favour. No fresh hand was engaged. It is highlighted that petitioner has herself left the work and her services were never terminated hence, she was not entitled for any relief.

4. The petitioner has filed rejoinder and reaffirmed the averments so made in the petition and denied those made in the reply.

5. From the pleadings of the parties and language of the reference, following issues were framed for determination on 06.12.2019:—

1. Whether termination of the services of petitioner by the respondent during August, 2002 is/was illegal and unjustified as alleged? . .*OPP.*

2. If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . .*OPP.*

3. Whether the claim petition is not maintainable, as alleged? . .*OPR.*

4. Whether the claim petition is bad on account of delay and laches, as alleged? . .OPR.

Relief

6. I have heard learned Counsels for the parties at length and considered the material on record.

7. For the reasons recorded hereinafter, the findings of this Court on the above issues are as under:—

Issue No.1 : No

Issue No.2 : No

Issue No.3 : No

Issue No.4 : No

Relief : Petition is **dismissed** per operative portion of the Award

REASONS FOR FINDINGS

Issues No.1 to 4 :

8. All these issues being interlinked and interconnected are taken up together for determination however separate findings shall be recorded on these issues.

9. The petitioner has though alleged that she was engaged in the year 1988 without appointment letter but she has not proved this fact. There is no witness has deposed to the effect that she was engaged in the year 1988. Rather, she herself admitted in her cross-examination that her services were engaged in May 1995 for the first time. Admission is best evidence that can be used against the person making the same. Thus when she has clearly admitted that she was engaged in the year 1995 for the first time, her plea to the effect that she was engaged in the year 1988 is not established at all.

10. In the case in hand, the question to be looked into by this court is regarding the alleged violation of Section 25-F, 25-G and 25-H of the Act by the respondent. The mandays chart has been tendered on the record as Ext.RW1/B which shows that petitioner has worked for 48 days in the year 2002 and earlier to this she had worked in the year 1996-1997. She has not worked even for single day in the years 1998, 1999, 2000 and 2001. The petitioner has not assailed this fact before the conciliation officer and the reference for condonation of time to time termination has not been made by the appropriate Government. The court can not examine those aspects of the matter

which have not been referred to it and, therefore, the court can not examine the issue of fictional breaks allegedly given to the petitioner from time to time for want of reference to this effect. The court has to examine the case in accordance with terms of the reference and therefore, it can be said that petitioner has worked only for 48 days in the year 2002 and prior to this, she has worked in the years 1996 and 1997. 48 days are much less to 160 days and since the petitioner has not worked for minimum 160 days in twelve calendar months before her alleged termination, therefore provision contained in Section 25-F of the Act is not attracted at all and the case of the petitioner can not be accepted on its face value. Since the petitioner has worked only for 48 days in the year 2002 when she was allegedly terminated, the court can not hold for any stretch of imagination that she had worked for minimum 160 days before her alleged termination. In brief, the violation of Section 25-F of the Act is not established at all.

11. The petitioner has alleged that her services were terminated by the respondent w.e.f. August 2002, whereas, the respondent has taken the plea that the petitioner has herself abandoned the work. The plea of abandonment is a plea of fact and onus is always upon the employer to establish the same. The employer can not ease itself of the burden unless cogent, convincing and trustworthy evidence is led to prove the fact that there was actual abandonment by the employee. It is settled law that in case the employer takes the plea of abandonment, it is for him to establish that he has taken ample steps to call the employee back on his absence. The absence from duties amounts of misconduct and therefore, in case, the worker absents himself, employer is supposed to initiate an inquiry into this misconduct and conclude thereafter that the absence of the petitioner was willful and amounted to misconduct. Unless such inquiry is conducted and the petitioner is apprised of his/her right, the plea of abandonment can not be accepted by the court. There is no presumption of abandonment against the workman. In this case neither any inquiry was conducted nor any show cause was issued to the petitioner nor she was asked to resume her duties after she had started absenting herself. Therefore, the plea of abandonment is not established at all. Once the plea of the abandonment of the services as taken by the employer is not established, the only presumption that can be legitimately drawn is to the effect that the services of the employee were terminated by the employer. Thus in the case in hand, since the respondent has failed to establish the plea of the abandonment of the work by the petitioner, it is held that her services were terminated in the year 2002 as already aforesaid, the petitioner has failed to establish the plea of the violation of section 25 F of the Act.

12. The next crucial question that arises for consideration is whether any junior workmen to the petitioner were retained by the respondent when her services were terminated. In this case it is important to understand firstly as to who is to be treated as junior workman to the petitioner in the given facts and circumstances. The petitioner was initially engaged in the year 1996 and she worked for 183 days in this particular year. In the year 1997 she worked 59 days only and thereafter she remained absent and did not report to the duties for as many as four years. She reported to the duties again in the year 2002 and worked only for 48 days. The question is whether her seniority has to be treated right from the year 1996 or from the year 2002. In my humble opinion, the seniority of the petitioner has to be taken from the year 2002 and not from 1996 as there is gap of four years in between during which the petitioner has not reported for the work at all. A period of long four years can not claim as fictional breaks given by the employer as no fictional breaks extends to long period of four years. Had the petitioner raised the issue of such fictional breaks before conciliation officer in the demand notice, and had any such reference been received by this court for disposal, the court would have given findings on this specific issue. When there is no such reference regarding fictional breaks, the court can not deliberate upon this aspect of the matter. The petitioner had thus joined in the year 1996 and left the work in the year 1997. She did not work for next four years and reported to the work again on 2002 and worked only for 48 days. In this situation, the engagement of the petitioner can not be treated to have taken place in the year 1996 when she has not worked the period of long four years—thereafter. She was again

engaged in the year 2002 by the respondent. Taking into account this long break, the petitoner shall be treated as a fresh hand in the year 2002 and she can not claim any seniority with those worker with whom she was engaged in the year 1996. The court has to treat her as fresh hand and she can not claim the seniority from the year 1996 as she has remained absent for as many as four years and this period of absence has not been condoned. Until the petitioner get this service break of long four years condoned as per law, she can not get her seniority from the year 1996 even for the purpose of invoking Section 25-G of the Act. The court has considered her seniority from the date of her engagement for the second time i.e. 2002. When the petitioner is held to have been engaged on 1.6.2002, it is clear that she worked till 31.7.2002. in this situation, only those workmen shall be treated her junior who were engaged in between the spell of this 48 days. No cogent evidence has been led to show that any workman was engaged w.e.f. 1.6.2002 to 31.7.2002 by the respondent, and he was, thus junior to the petitioner. Since no evidence regarding the engagement of fresh hands in between 1.6.2002 to 31.7.2002 has been led, therefore, it can not be said that any worker was junior to the petitioner on the date of her termination. For the sake of repetition, the work done by her in the year 1996 and 1997 can not be counted to give any benefit to her as there is long break of four years which has not been condoned nor such prayer has been made. Even there is no reference to condone the break of these four years. The petitioner has tendered on record a seniority list Ext.PW1/B and as per this seniority list the last workman was engaged in the year 1998. Since this court has held that the engagement of the petitioner shall be treated as on 1.6.2002 for the purpose of this case, therefore all these worker shown in this seniority list are senior to her and she can not claim any benefit of Section 25-G of the Act. The petitioner has in para no.10 of the claim mentioned few persons without their complete address sufficient to establish their identity and claimed that these eight persons were engaged after the year 2008. The respondent has denied this fact and the petitioner has failed to establish the same. When the particulars of these persons are vague in itself, the court can not presume anything in favour of the petitioner. The respondent has moreover, come up with the specific stand that whosoever was re-engaged, it was done as per the orders of the courts and not otherwise. In case, the petitioner was confident about the names of these workmen who were engaged after the year 2002 on daily wage basis she should have placed complete particulars of those workmen on the record, so that the court could have asked the respondent to discharge the onus that was shifted upon the respondent. Since the petitioner has herself led vague evidence, therefore, the court can not give benefit to her even fully realizing that the petitioner has come to the court under beneficial piece of legislation. It is equally settled law that undue sympathy can not be equated with the beneficial provisions of the Act and undue sympathy is not synonyms of beneficial piece of legislation. Thus undue sympathy can not be shown to the petitioner when she herself attributed to her troubles and no relief can be granted as she has even failed to prove as to who fresh hands engaged on muster roll by the respondent even after the year 2002 without giving priority and preference to her. When the respondent has come up with the specific case that whosoever was later on engaged it was done in order to implement the awards of the court and not otherwise. Had the petitioner named a specific workman with complete particulars, who according to her has worked after the year 2002, the court would have shifted the onus upon the respondent and asked the respondent to discharge the same. Since it did not happen, therefore provisions of Section 25-H is not established in this case and petitioner is not held entitled for any relief as claimed by her despite of the fact witness Shri Sachin Sharma, DFO Pangi (RW1) had a generalized admission to the effect that workmen junior to the petitioner were regularized with the passage of the time. The admission made by this witness has to be understood in the light of the material on the record and not in the in blanket form. The claim petition is maintainable as it has been filed in support of the reference. It is different matter that petitioner has failed to establish her case. So far as the delay and laches are concerned, certainly there is delay of 13 years but this can not be ground for denial of the relief. The delay has to be taken into account while the court decides the question as to whether the petitioner is entitled to the relief of reinstatement or for the amount of compensation. In the case in hand, since the petitioner has failed to prove violation of any of the provisions of the Act, therefore, the question of delay and

laches has no impact and it pales into insignificance and is held accordingly. All these issues are held accordingly.

RELIEF

13. In view of my above discussions, the present claim petition fails and is accordingly dismissed. Parties are left to bear their own costs.

14. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 30th day of June, 2023.

Sd/-
(HANS RAJ),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-**INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No.	:	91/2020
Date of Institution	:	11-9-2020
Date of Decision	:	30-6-2023

Shri Dalveer Singh s/o Shri Khushi Ram, c/o Manager, Hotel Nitesh, Aloe, Manali, District Kullu, H.P., r/o Village Mada, P.O. Niyani, Tehsil Dasua, District Hoshiarpur, Punjab.

. .*Petitioner.*

Versus

The Director, Atal Bihari Vajpayi Mountaineering & Allied Sports, Manali, District Kullu, H.P. . .*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the petitioner	:	Sh. N. L. Kaundal, Ld. AR
For the respondent	:	Sh. Anil Sharma, Ld. Dy. D.A.

AWARD

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short).

"Whether the termination of services of Shri Dalveer Singh s/o Shri Khusi Ram, C/o Manager, Hotel Nitesh, Aloe, Manali, District Kullu, H.P., r/o Village Mada, P.O.

Niyani, Tehsil Dasua, District Hoshiarpur, Punjab w.e.f. 01-07-2018 by the Director, Atal Bihari Vajpayi Mountaineering & Allied Sports, Manali, District Kullu, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, past service benefits and compensation the above worker is entitled to from the above employer?"

2. The case of the petitioner, in brief, is to the effect that he was engaged by the respondent through its management as sweeper in the year 2007 without any appointment letter. No terms and conditions were settled with him at the time of his engagement. The petitioner worked with dedication and in continuity to the complete satisfaction of the management without any complaint but his services were terminated w.e.f. 01.7.2018 on 30.6.2018 by the respondent by verbal orders. The petitioner felt aggrieved and raised issue of his alleged termination with conciliation officer Kullu and conciliation proceedings took place in the matter but without any success. The reference was made by the appropriate Government for adjudication to this court. Grievance of the petitioner is to the effect that neither the compliance of Section 25-F took place in the matter nor any inquiry was conducted against him. Workmen junior to him were retained and, therefore, violation of Section 25-G took place. The petitioner was also due for his regularization but he was subjected to unfair labour practices by the respondent and he is now without any work. On all these allegations, the petitioner has prayed for his reinstatement with all the consequential benefits including continuity in service, seniority and regularization as per the policy of the State Government.

3. The respondent has resisted and contested the petition on the plea of locus standi, maintainability and delay on the part of the petitioner to raise the issue. The petitioner is also said to have not come to the court with clean hands. On merits, the case of the respondent is to the effect that the services of the petitioner were engaged on his request as sweeper on daily wages purely on temporary basis and he had himself willfully left the job w.e.f. 2nd June, 2018, and his services were never terminated by the respondent. His wages are not pending payment and there is no violation of any rule on the part of the respondent. The department is said to have taken a decision in a meeting held on 10th July, 2018 to the effect that the contingent workers/helper for conducting training programmes shall be recruited through outsource agency and petitioner refused to work through outsource agency and thus no violation of the law has taken place on the part of the respondent. It is explained that since the petitioner has not worked for 240 days in a calendar year in continuity for five years, therefore his case could not be considered for regularization hence, there is no merit in the claim and the claim be dismissed accordingly.

4. The petitioner has filed rejoinder and reaffirmed the averments so made in the petition and denied those made in the reply. It is however pointed out that fictional breaks were given to the petitioner from time to time so that he could not claim regularization and the decision taken by the respondent to engage the services of contingent works through outsource agency was not applicable on the petitioner as he was inducted in the year 2007. It is prayed that the claim be allowed.

5. From the pleadings of the parties and language of the reference, following issues were framed for determination on 4th April, 2022:—

1. Whether the termination of services of the petitioner w.e.f. 01-07-2018 by the respondent is violation of the provisions contained under Section 25-F of the Act, as alleged? . .*OPP.*

2. Whether the respondent has violated the provisions contained under Section 25-G and 25-H of the Act, as alleged? . .*OPP.*

3. If issues no.1 & 2 are proved in affirmative, to what relief, the petitioner is entitled to? . .*OPP.*

4. Whether the claim petition is not maintainable, as alleged? . .*OPR.*

5. Whether the petitioner has not come to the Court with clean hands and has suppressed the material facts, as alleged. If so, its effect? . .*OPR.*

Relief.

6. I have heard learned Authorized Representative/Counsel for the petitioner as well as learned Dy. District Attorney for the respondent at length and considered the material on record.

7. For the reasons recorded hereinafter, the findings of this Court on the above issues are as under:—

Issue No. 1	:	Decided accordingly
Issue No. 2	:	Decided accordingly
Issue No. 3	:	Decided accordingly
Issue No. 4	:	No
Issue no. 5	:	No
Relief	:	Petition is **allowed** per operative portion of the Award

REASONS FOR FINDINGS

Issues No. 1 to 5:

8. All these issues being interlinked and interconnected are taken up together for determination however separate findings shall be recorded on these issues.

9. The petitioner has appeared as PW1 in the witness box and tendered his affidavit Ext.PW1/A. The respondent, on the other hand, examined Ms. Anuja Awasthi, Sr. Mountaineering Supervisor as RW1. This official witness has tendered on record authority letter Ext. A1 apart from the affidavit and several documents as RW1/B1 to Ext.RW1/X23 respectively. These documents are very material for the adjudication of this case.

10. When the pleadings of the parties are carefully examined many facts are not in dispute. The petitioner has claimed that he was engaged as a daily wager sweeper in the year 2007 and respondent has not disputed this plea. Rather respondent has placed on record details of working days of the petitioner right from the year 2007 to 2018 in the form of Annexure-A proved as Ext.RW1/B1 to B13. These documents show that petitioner was engaged in the year 2007 and he has worked for 267 days in the year 2007. The petitioner has worked in continuity till 1.6.2018. There is no break of complete year in between. The petitioner has worked for 267 days in 2007, 303 days in 2008, 201 days in 2009, 243 days in 2010, 334 days in 2011, 274 days in 2012 and so on. The petitioner has been shown to have worked for 127 days in the year 2018. The muster rolls pertaining to the petitioner and others have been tendered as Ext.RW1/C1 to C-108. Some of the documents show that manner in which payment was made to the petitioner. It is thus an admitted

fact that petitioner was engaged as a daily wage sweeper in the year 2007 and he has worked in continuity till 1st June, 2018.

11. The case of the petitioner is to the effect that there is violation of Section 25-F of the Act as neither any notice was served upon him nor compensation in lieu of termination was paid. The respondent, on the other hand, has claimed that petitioner had abandoned the work at his own. It may be stated here that plea of abandonment is a plea of fact and the onus is upon the employer to establish the plea. It is thus for the respondent to prove the plea of abandonment. When the material on the record is carefully analyzed, it is clear that respondent has miserably failed to prove the plea of abandonment. Although the pleadings are to the effect that the petitioner has abandoned the work, yet when the contents of the reply filed by the respondent are read as a whole, it becomes clear that in the year 2018 the department had decided to engage contingent worker/sweepers etc. on outsource basis. This fact is clear from the office memorandum dated 12 September 2018 as Ext.RW1/C-108. The case of the respondent is to the effect that petitioner was asked to work through the contractor but he refused to do so, hence his services got terminated automatically. The plea of abandonment has to be pleaded in many words. In this case once the respondent has come up with the case that in the year 2018 decision was taken to engage sweepers and other contingent workers on outsource basis, the plea of abandonment fails on the face of it. The petitioner has never abandoned the work. He was rather compelled to work through a contractor. Working through contractor would mean that the petitioner was to loose his previous seniority as daily wage worker, and in case, the petitioner had accepted the worked through a contractor, his services as daily wages would have got automatically terminated. It is for this reason that the petitioner refused to work through contractor and his services were not continued for as daily wager. Thus there is nothing on the record which would prove that the petitioner has abandoned the job at his own. Rather circumstances were created by the respondent to such an extent that his services were not continued as daily wager and he was asked to work through contractor. Such act and conduct of the respondent amounts automatic termination of the services of the petitioner as daily wager and the plea of abandonment fails. Thus from the material on the record it is proved fact that the petitioner has not abandoned the work at his own, rather, he was asked to work through contractor and when he refused to do so, his services were discontinued as daily wager. Thus the plea of abandonment fails to stand to legal scrutiny.

12. The next question that arises for consideration is whether the respondent is proved to have caused the violation of provisions contained in Section 25-F of the Act or not. In order to invoke the provisions contained in Section 25-F of the Act it is for the petitioner to prove that he has worked for 240 days in a calendar year preceding his termination, and in case, he succeed to establish this fact only then law requires the compliance of Section 25-F of the Act before such termination. In order to find out whether the petitioner has been able to established that he has worked for minimum 240 days in the 12 calendar months preceding his termination the court has examined the mandays chart/working day details of the petitioner for the year 2018 and 2017. Since the services of the petitioner were terminated on 1st June, 2018 therefore, the court has to examine his working days in reverse order for past 12 months. When his working days are examined in between July 2017 to 1st June, 2018, the same comes to 273 days from the document Ext.RW1/B12 and B13. It is thus very much clear that the petitioner has worked for more than 240 days in preceding 12 calendar months of his termination. In this situation, it was mandatory for the respondent to have complied with the provisions contained in Section 25-F of the Act. When the plea of abandonment is not established even remotely then clear cut violation of Section 25-F of the Act is established in this case, as neither any notice was served upon the petitioner nor compensation in lieu of termination was assessed as per the law and paid to him. Rather his services were terminated indirectly by asking him to join the services through contractor. The respondent has although examined Smt. Anuja Awasthi as RW1 on the record but she has stated the facts against the record. She has claimed that the petitioner was engaged on as and when required

basis but mandays chart shows that during most of the years of his service, the petitioner has worked for more than 240 days. It shows that work of the respondent pertaining to the sweeping was not a contingent/casual which would have been generated only for few days in a month, but it was of regular and continuous nature. There was no question of engaging the services of the petitioner on as and when required basis. Even the working day details of the petitioner show that petitioner was engaged as daily wager. Had the petitioner been engaged on as and when required basis, some terms and conditions would have been settled with him and such a document would have seen the light of the day. Thus it is established that the services of the petitioner were engaged in the year 2007 as a daily wage sweeper and he has worked till 1st June, 2018 and his services were terminated by asking him to join through contractor and on the refusal on the part of the respondent to continue him as daily wage sweeper. Neither any compensation was assessed nor paid nor any notice was served upon him. Thus for the aforesaid discussion violation of Section 25-F of the Act is established in this case.

13. The petitioner has further alleged that violation of Section 25-G of the Act also took place in his case, as workmen juniors to him were retained at his cost and his services were terminated by violating the principle of 'last come first go'. The learned Authorized Representative/Counsel has referred to various documents on the record particularly Ext.RW1/E where Smt. Sushma Devi has been shown as daily wager having been engaged on 21.11.2009. The learned Authorized Representative/counsel for the petitioner has argued that since the petitioner was engaged as a daily wager in the year 2007 and Smt. Sushma Devi was converted into daily wager in the year 2009, therefore, the petitioner was senior to her as he was engaged as daily wager in the year 2007 hence, the services of the petitioner could not have been terminated by retaining the juniors. On the other hand, the learned Deputy District Attorney for the respondent has argued that when the services of the petitioner were allegedly terminated, services of Smt. Sushma Devi were already regularised, and therefore, there is no parity between the two, and petitioner was the junior most, hence, violation of Section 25-G is not attracted at all.

14. The petitioner has sworn his affidavit Ext.PW1/A whereby he has leveled vague allegations regarding the violation of Section 25-G of the Act by the respondent. He did not name any junior workman to him, who as per him was retained. Smt. Anuja Awasthi has appeared as RW1 in the witness box and her affidavit is Ext.RW1/A. She stated that no violation of any provision of the Act has taken place in this case. When she was cross-examined, the counsel appearing for the petitioner put her specifically the case of Smt. Sushma Devi. She denied that Smt. Sushma Devi was junior to the petitioner. She admitted that the services of this Sushma Devi were regularized on 1.4.2017. The engagement letter of Smt. Sushma Devi has been placed at page No.159 of the documents filed by the respondent and it has been marked as Ext. RW1/X23. It shows that this Sushma Devi was earlier part-time worker and she had completed eight years on 23.9.2008 and her services were converted from part-time into daily wages. If this situation is examined it is clear that petitioner is senior to Smt. Sushma Devi as petitioner was engaged as daily wager in the year 2007. The services of the Smt. Sushma Devi were converted into daily wage worker in the year 2009. Thus name of Smt. Sushma Devi will come below the name of the petitioner in the seniority list of daily wagers. The situation has become unpleasant for the petitioner after the services of Smt. Sushma Devi were regularized in the year 2017. The regularization letter of Smt. Sushma Devi has been placed on the record at page 72 as Ext. RW1/W-23. This Sushma Devi was regularized against the post that had fallen vacant on 1.4.2016 on the retirement of another sweeper Shri Krishan Chand. Smt. Sushma Devi who was junior to the petitioner was regularized against the vacant post, whereas, the services of the petitioner were not regularized despite of the fact that he was senior to Smt. Sushma Devi. It appears that he had not completing more than 240 working days in each calendar year in the last five years and he thus could not fulfill the criteria meant for regularization. Once the services of Smt. Sushma Devi sweeper were converted from daily wager to regular workers, she can not be treated at par with the

petitioner. Now she has become senior of the petitioner. Had the services of the petitioner been regularised by the respondent after this date, he would have become junior to Smt. Sushma in the list of the seniority in the regular cadre. Thus there can not be any parity between Smt. Sushma Devi and the petitioner. When the mandays chart/working day details of the petitioner are examined it becomes clear that he has not worked for minimum 240 days in the years 2009, 2014, 2015 and 2018. It appears that for these reason his services could not be considered for regularization in accordance with the policy of the State Government. Had he worked for 240 days in all of these years his case could have been considered earlier in time to Smt. Sushma Devi for regularization. The petitioner has not assailed this position by raising the demand that he was given time to time termination intentionally with a view to defeat his valuable right being regularized as per policy of the Government. The petitioner has not agitated this fact either through the demand notice or otherwise. The reference received by this court also does not find mention of time to time termination of the petitioner and no adjudication has been sought from this court regarding time to time termination of the services of the petitioner during aforesaid years. The court therefore, can not condone such fictional breaks. The court has to take the reference as it is, and answer the same in the manner it has been framed. Since the services of Smt. Sushma Devi were regularized in the year 2017 therefore, she was removed from the list of daily wagers and there is no parity between her and rest of the daily wagers including petitioner. The services of the petitioner were terminated in the year 2018 when Smt. Sushma Devi has completed more than six months in the capacity of regular employee. She can not be termed a daily wager on date when the services of the petitioner were terminated and petitioner can not contend that she was junior to him and her services should have been terminated first by following the principle of 'last come fist go'. A regular employee can not be governed by provisions contained in Sections 25-F, 25-G and 25-H of the Act therefore, the case of the petitioner that Smt. Sushma Devi was junior to him on the date of his retrenchment is without any merits and can not be considered in his favour. The petitioner has not named any other daily wager who was junior to him and was retained by the respondent. There is no evidence on the record. Thus for the aforesaid reason the petitioner has failed to prove that any other daily wager who was junior to him and working was retained and his services have been terminated thus violation of Section 25-G of the Act is not established in this case.

15. The petitioner has further alleged that fresh hands were also engaged after termination of his services. The petitioner has not led any evidence on this fact. The respondent has placed on record various documents and it is clear from the letter Ext.RW1/C-108 that after September 2018 the respondent has taken the decision to not to engage any contingent/workers but the work of contingent/workers was to be outsourced. When such is the decision taken by the respondent in the year 2018 it can not be said that any daily wager was engaged thereafter by the respondent. It is clear from the list Ext.RW1/E that several persons have been appointed either as clerk or Chowkidar, driver, cook or peon etc. till the year 2022 by the respondent but these workers have been converted into regular services after obtaining the reports of the DPC. Thus the petitioner has failed to make out the case for the violation of section 25 H of the Act as well.

16. The next question that arises for consideration is as to what relief the petitioner is entitled to, when the violation of section 25 F alone has been established in this case? The Hon'ble Supreme Court of India has laid broad guidelines on the point as to when the relief of reinstatement is be granted by the labour court and when compensation in lieu of reinstatement has to be awarded in **DEPUTY EXECUTIVE ENGINEER V/S KUBERBHAI KANJIBHAI reported in 2019 (4) SCC 307**. The relevant portion of the judgment is as under:—

> **[9]** In our opinion the case at hand is covered by the two decisions of this Court rendered in the case of Bharat Sanchar Nigam Limited vs Bhurumal, 2014 7 SCC 177 and District Development Officer and Anr. vs. Satish Kantilal Amerelia, 2018 12 SCC 298

[10] It is apposite to reproduce what this Court has held in the case of Bharat Sanchar Nigam Limited (supra):

> **"33.** It is clear from the reading of the aforesaid judgments that the ordinary principle of grant of reinstatement with full back wages, when the termination is found to be illegal is not applied mechanically in all cases. While that may be a position where services of a regular/permanent workman are terminated illegally and/or malafide and/or by way of victimisation, unfair labour practice, etc. However, when it comes to the case of termination of a daily-wage worker and where the termination is found illegal because of a procedural defect, namely, in violation of Section 25-F of the Industrial Disputes Act, this Court is consistent in taking the view that in such cases reinstatement with back wages is not automatic and instead the workman should be given monetary compensation which will meet the ends of justice. Rationale for shifting in this direction is obvious.
>
> 34. The reasons for denying the relief of reinstatement in such cases are obvious. It is trite law that when the termination is found to be illegal because of non-payment of retrenchment compensation and notice pay as mandatorily required under Section 25-F of the Industrial Disputes Act, even after reinstatement, it is always open to the management to terminate the services of that employee by paying him the retrenchment compensation. Since such a workman was working on daily-wage basis and even after he is reinstated, he has no right to seek regularisation [see State of Karnataka v. Umadevi (3), 2006 4 SCC 1]. Thus when he cannot claim regularisation and he has no right to continue even as a daily-wage worker, no useful purpose is going to be served in reinstating such a workman and he can be given monetary compensation by the Court itself inasmuch as if he is terminated again after reinstatement, he would receive monetary compensation only in the form of retrenchment compensation and notice pay. In such a situation, giving the relief of reinstatement, that too after a long gap, would not serve any purpose.
>
> 35. We would, however, like to add a caveat here. There may be cases where termination of a daily-wage worker is found to be illegal on the ground that it was resorted to as unfair labour practice or in violation of the principle of last come first go viz. while retrenching such a worker daily wage juniors to him were retained. There may also be a situation that persons junior to him were regularised under some policy but the workman concerned terminated. In such circumstances, the terminated worker should not be denied reinstatement unless there are some other weighty reasons for adopting the course of grant of compensation instead of reinstatement. In such cases, reinstatement should be the rule and only in exceptional cases for the reasons stated to be in writing, such a relief can be denied."

[11] Here is also a case where the respondent was held to have worked as daily wager or muster roll employee hardly for a few years in R & B of the State; Secondly, he had no right to claim regularization; Thirdly, he had no right to continue as daily wager; and lastly, the dispute was raised by the respondent (workman) before the Labour Court almost after 15 years of his alleged termination.

[12] It is for these reasons, we are of the view that the case of the respondent would squarely fall in the category of cases discussed by this Court in Para 34 of the judgment rendered in Bharat Sanchar Nigam Limited (supra).

[13] In view of the foregoing discussion, we are of the considered view that it would be just, proper and reasonable to award lump sum monetary compensation to the respondent in full and final satisfaction of his claim of re-instatement and other consequential benefits by taking recourse to the powers under Section 11A of the Industrial Disputes Act, 1947 and the law laid down by this Court in Bharat Sanchar Nigam Limited's case (supra).

17. Now it is for this court to examine the facts and circumstance of this case in the light of the law laid down by the Hon'ble Supreme Court supra. The violation of section 25 F alone is established in this case. Thus as per the law laid down by the Hon'ble Court referred hereinabove, normally the petitioner would be entitled for the relief of compensation instead of re-employment. But when several factors discussed hereinafter are examined, the case of the petitioner comes within the preview of the caveat added by the Hon'ble Court in para 35 supra.

18. Firstly, the petitioner was engaged as a daily-wage sweeper in the year 2007. These facts are very much clear from the documents filed and proved by the respondent on the record. Ext. RW1/B2 is the first document showing the position of the petitioner in the year 2007. The petitioner has been referred to as daily wage sweeper in this document. Thus the documents of the respondent prove that the petitioner was engaged as a daily wage sweeper in the year 2007. All other documents upto the year 2018 Ext. RW1/B3 to Ext. RW1/B 13 show that the petitioner was a daily wage sweeper till the date of his termination. The muster rolls Ext. RW1/C-1 to Ext. RW1/C-108 also show the same position. The petitioner has been shown as daily wage sweeper throughout. The plea of the respondent that the petitioner was engaged on need basis is also falsified from the documents proved on the record by the respondent. Ext. RW1/B-1 is the details of the working days of the petitioner w.e.f 2007 to 2018. The petitioner has worked for more than 240 days in the years 2007, 2008, 2010, 2011, 2012, 2013 2016 and 2017. He has worked for more than 200 days in rest of the years except for the year 2018 when his services were terminated after he has worked for 127 days. The services of the sweeper can not be on need basis and cleanliness is required on every working day in any institution. It is not the case of the respondent that for the rest of the days when the petitioner has not worked as a sweeper in the institute, the institute was closed, hence, the cleanliness was not required. Thus the plea of need basis has been taken just to defeat the rights of the petitioner. Infact, the respondent has exercised unfair labour practice in the case of the petitioner in order to deprive him of those legal rights which he was supposed to get with the passage of time. The petitioner was engaged as daily-wage sweeper in the year 2007. One Smt. Sushma was converted as daily-wage sweeper in the year 2009. She was part time sweepers before 2009. Thus the petitioner was senior to this Sushma as he was engaged as daily wage sweeper in the year 2007, whereas, Smt. Sushma acquired this status in the year 2009. Her name would figure after the petitioner in the seniority list of the daily-wage sweepers of the institute. This Smt. Sushma was given the work of more than 240 days every year by the respondent and in the year 2017 her services were regularized against the regular post of sweeper which was lying vacant on the retirement of Sh. Krishan Chand Sweeper since 1st November, 2016. It is thus very much clear from the aforementioned fact that the work of sweepers was always available with the respondent throughout the year right from the year 2007 to 2018. It is for this reasons that the Smt. Sushma, who was junior to the petitioner was given work for more than 240 days every year after 2009 and her case fell in the zone of consideration for regularization of services and her services were regularized in the year 2017. Despite of this fact, the petitioner, who was engaged prior to this Sushma as daily-wage sweeper was not given the work of minimum of 240 days in the years 2009, 2014 and 2015 so that he could not become eligible for regularization on his turn. Smt. Sushma, who was junior to him was given work for more than 240 days every year and she became eligible for regularization and her services were regularized in the year 2017. In case, it is assumed for a while that work for minimum 240 days was not available in the years 2009, 2014 and 2015, the breaks could have been given to the junior workmen and not to the senior. Since the petitioner was

engaged as a daily wage sweeper in the year 2007 and Smt. Sushma was converted as daily-wage sweeper in the year 2009, the petitioner was thus senior to her and the petitioner should have been the first preference being senior. In case, the work was available for one sweeper only, the breaks could not have been given to the petitioner, but such breaks should have been given to his junior Smt. Sushma. The respondent gave breaks in services to the petitioner and gave continuity in service to his junior and , regularised her services prior to him in the year 2017 on the ground that since the petitioner has not worked for minimum 240 days in each calendar year in preceding five years, therefore, he was not eligible for being considered for regularization. The services of the sweeper junior to him namely Smt. Sushma were regularized on the ground that she had worked for 240 days in each calendar year. It is not the case of the respondent that the petitioner had himself absented in the years 2009, 2014 and 2015, and therefore, he could not complete minimum 240 working days. It is thus very much proved that the petitioner was given breaks by the respondent intentionally despite of the fact that the work was always available for him and another sweeper, who was junior to him, was given work throughout and she was ultimately benefited as her services were regularised in the year 2017 and the petitioner, who was senior was ignored not for his fault but due to the wrongful action of the respondent. The rule of first come last go was violated. Junior was given work throughout whereas, the senior workman was given breaks with a view to cause wrongful loss to him and wrongful gain to his junior. This is the best example of Unfair labour practice on the part of the respondent. Had this unfair labour practice been not exercised by the respondent, the services of the petitioner would have been regularised in the year 2017 and his junior Smt. Sushma would have been waiting in his place for her turn to come. Thus the case of the petitioner is covered in the caveat carved out by the Hon'ble Apex Court in the judgment cited above. The petitioner is therefore, entitled to the relief of reinstatement in these peculiar facts and circumstance..

19. Secondly, the respondent by way of a decision taken in the year 2018 has decided to engage the contingent workers on outsource basis. This decision shall be applicable to those, who are engaged after this decision. This decision can not act in retrospective manner and can not be made applicable to the petitioner who has been working since the year 2007 in continuity. Moreover, the petitioner was a daily wage sweeper and not the contingent worker. This decision is not applicable to the case of the petitioner. Thus retrenching the services of the petitioner orally by directing him to join through outsource agency is another instance of unfair labour practice with a view to defeat the legitimate rights of the petitioner by such tactics.

20. When the exercised of unfair labour practice is proved on the part of the respondent in the case of the petitioner and when workmen junior to him were permitted to complete 240 days in each calendar year violation of Industrial Disputes Act took place. The Industrial Disputes Act speaks of the principle of 'first come last go' which not only applies in case of termination or retrenchment but it applies everywhere. When the petitioner was senior to Smt. Sushma then, in case, there was no sufficient work available with the respondent, she should have been given the breaks and not the petitioner who was senior to her as daily wager. For the sake of repetition, he was engaged in the year 2007 and the petitioner was converted into daily wager sweeper in the year 2009. Since the respondent violated the principle of 'first come last go' while awarding the work to the petitioner and Smt. Sushma Devi, and exercised unfair labour practice by giving more preference to Smt. Sushma and regularizing her services, the petitioner is entitled for the relief of reinstatement so that he could also avail the benefit of regularization as per the policy. It is clear from the document Ext.RW1/Q there are as many as five sanctioned posts of sweeper with the respondent and it is not the case of the respondent that there is no sanctioned post of sweeper. When there are five posts of sweepers in the department and only three persons shown as regular sweepers, the petitioner also has a legitimate right to be considered for regularization after having put so many years in the institution as a daily wager. In case the petitioner is awarded monetary benefit only then all the aforesaid opportunities shall be lost to him and it will amount subject him

to injustice twice, firstly injustice had done to him by the respondent by not giving him work of 240 days when junior to him was given work of 240 days and junior to him was regularized whereas his (petitioner's) services were terminated. Secondly, in case, he is held entitled to compensation only by this court by way of Award, it will amount to multiply the wrong done by the respondent. Therefore, the petitioner is held entitled for reinstatement holding that his services were illegally terminated w.e.f. 1.7.2018 and violation of Section 25-F of the Act took place in the matter. It is held that the petitioner was always available for work but he was given the breaks illegally. Since there is no reference for condonation of breaks, therefore, much can not be said about the same but petitioner is held entitled for continuity in service w.e.f. the date of his termination till his reinstatement with the presumption that had he been in the service he would have worked for minimum 240 days in each calendar year from the order of his termination till his reinstatement. The petition is maintainable and it is held that petitioner has come to the court with clean hands. The petitioner is also held entitle back wages for the period he remained without work on account of the wrongful action of the respondent. Reference may be made to the law laid down by the Hon'ble Supreme Court of India in **(2013) 10 SCC 324** titled as **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.ED.) and Ors.,** whereby it has been held that in case the full back-wages are not awarded to the workman when the violation of the Act by the respondent is established, it will amount to encourage the employer for illegal termination. Taking support from the aforesaid law, the petitioner is held entitled for back-wages on such rates and manner he would have received in case his services were never terminated. In other words, he shall be presumed in services w.e.f. from the date of his termination till the date of order and his wages shall be calculated as per the rates prevalent at the relevant time on the presumption that he was very much in service and was paid every month.

21. In view of the aforesaid discussion it is held that the services of the petitioner were terminated illegally by the respondent w.e.f. 1.7.2018 and he is therefore, entitled for his reinstatement as he was subjected to unfair labour practices. He is also entitled for full back wages to be calculated in the same manner as if he was in service throughout and had never remained off duty on account of termination. Hence all these issues are decided accordingly.

RELIEF

22. In view of my above discussions, the claim petition succeeds and is allowed. The respondent is directed to reinstate the services of the petitioner forthwith with continuity and seniority. He is held entitled to back wages to be calculated in the same manner as if he was never terminated. Parties are left to bear their costs.

23. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 30th day of June, 2023.

Sd/-
(HANS RAJ),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-**INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 271/2014

Date of Institution : 18-9-2014

Date of Decision : 30-6-2023

Shri Ajay Kumar s/o Shri Hans Raj, r/o Village & Post Office Jakheda, Tehsil Mehatpur, District Una, H.P. . .*Petitioner.*

Versus

1. The Managing Director, M/s HPGIC Ltd. Himrus Bhawan, Shimla-1.

2. The General Manager, C.L.B.P. (Unit of HPGIC) Industrial Area, Mehatpur, District Una, H.P.

3. Sh. Ram Singh Kanda (Government Contractor) (C.L.B.P.) Industrial Area, Mehatpur, District Una, H.P. . .*Respondents.*

Direct Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the petitioner : Sh. N. L. Kaundal, Ld. AR

For the respondent(s) No.1 & 2 Adv. : Sh. Vipul Bhardwaj, Ld.
For the respondent No.3
: Already *ex parte*

AWARD

The petitioner has filed this direct claim under Section 2-A of the Industrial Disputes Act, 1947 as amended by The Industrial Disputes (Amendment) Act, 2010 (24 of 2010) read with Section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) against respondents.

2. The case of the petitioner as made out from the claim petition is that he was engaged by the respondents no.1 & 2 on daily wage bases to perform supervisory/clerical work against vacant post in CLBP Mehatpur without any appointment letter w.e.f. 2009. In the year 2009, the respondents no.1 & 2 have awarded tenders to unregistered contractor Shri Vishal Kumar & Company Mehatpur and this contractor started executed the work in the factory in the month of June 2010 and worked continuously with the respondents no.1 & 2 till 31.5.2011. As many as 25 daily wage workers of the respondents no. 1 & 2 were also adjusted on the rolls of the above-said contractor. This contractor was unregistered contractor. On 31.5.2011, another local contractor namely Shri Dharampal was engaged by the respondents no.1& 2 and he executed the awarded work w.e.f. 1.6.2011 to 31.5.2012. The respondents no. 1 & 2 again adjusted the petitioner in his roll along with 46 other workmen. This contractor was also not registered under the Contract Labour (Regulation and Abolition) Act, 1970. The contract of this Shri Dharampal was terminated on 31.5.2012 and thereafter one Shri Baldev Chand was engaged as contractor and work was awarded to him for one year and this contractor again adjusted the petitioner in his rolls and made the petitioner to work in the same capacity he was already working with the respondents no. 1 & 2. The services of this contractor were also terminated on 31.5.2013 and later on Shri Ram Singh

Kanda contractor was engaged who worked till 31.5.2014. He also adjusted several workmen including the petitioner and his agreement came to an end on 31.5.2014. This contractor terminated the services of the petitioner orally on the directions of respondents no.1 and 2 without conducting any inquiry against him and without any misconduct having been proved on the part of the petitioner. Since the petitioner has worked for more than 240 days in each calendar year, therefore, violation of the provision contained in section 25 F of the Act took place at the instance of the respondent. A union was formed by workmen including the petitioner who were adjusted with various contractors as aforesaid and this Union was registered as Himachal Pradesh Desi Sarab Karkhana Karamchari Sangh Mehatpur. A demand notice under Section 2K of the Act was served by the Union on the respondents no.1 and 2 with their demands and the matter is pending separately. The petitioner was active member of this worker Union, and therefore, his services were terminated and such termination amounts to exercise of unfair labour practices. The petitioner approached the respondents time and to re-engage his services but he was not allowed to enter in the factory. He therefore, raised the industrial dispute against the respondents vide demand notice and conciliation proceedings took place in the same, but nothing favourable happened, and the present reference was made at the instance of the government to this court. The petitioner, on the aforesaid averments has prayed for his reinstatement with all other benefits.

3. The respondents have resisted and contested the claim on the plea that petitioner was never engaged by respondents no.1 and 2 at any point of time and there was no question of issuing any appointment letter in his favour. The tenders were invited every year in which several bidders appeared and the successful bidder executed the work every year and the respondents no.1 and 2 had no concerned whatsoever with the petitioner as he was not their employee. The respondents have denied other allegations regarding adjustment of the petitioner from one contractor to another by the respondents no. 1 & 2. The contractors used to employ their own labour and the respondents no.1 and 2 had no role in adjusting the petitioner through all the contractors referred above. Other allegations are denied and it is submitted that the petitioner has no case on merits.

4. The petitioner has filed rejoinder and reaffirmed the averments so made in the petition and denied those made in the reply.

5. From the pleadings of the parties and language of the reference, following issues were framed for determination on 31.10.2017:—

1. Whether the termination of the services of the petitioner by the respondents w.e.f. 23-08-2013 is/was improper and unjustified as alleged? . .*OPP.*

2. If issue No.1 is proved in affirmative, what service benefits the petitioner is entitled to? . .*OPP.*

3. Whether the petition is not maintainable in the present form as alleged? . .*OPR.*

4. Whether the petitioner has no cause of action to file the present case as alleged? . .*OPR.*

5. Whether the petitioner has locus standi to file the present case as alleged? . .*OPR.*

6. Whether the petitioner has not come to the court with clean hands as alleged? . .*OPR.*

7. Whether the claim petition is bad for non-joinder of necessary parties as alleged? . .*OPR.*

Relief

6. I have heard learned Authorized Representative for the petitioner as well as learned Counsel for the respondents at length and considered the material on record.

7. For the reasons recorded hereinafter, the findings of this Court on the above issues are as under:—

Issue No.1	:	No
Issue No. 2	:	No
Issue No. 3	:	No
Issue No. 4	:	Yes
Issue No. 5	:	Yes
Issue No. 6	:	Yes
Issue No. 7	:	No
Relief	:	Petition is **dismissed** per operative portion of the Award

REASONS FOR FINDINGS

Issue No.1

8. There is a dispute of the facts in this case which requires adjudication with help of the pleadings and the evidence adduced by the parties. The petitioner in his claim has submitted that he was engaged w.e.f. 2009 by respondent nos.1 and 2 as daily wage supervisor/clerk in the production department against the vacant post. The respondents have denied these averments as incorrect. It has been explained that petitioner was neither engaged in the manner as alleged by him nor he remained their workman at any point of time. According to them, the work of production department was given to contractors and tenders were invited as per the rules where after successful bidder was awarded the contract. Such contractors used to employ their own labour and payment was made to the contractors as per terms and conditions of the contract hence, any labour engaged by the contractor has no connection whatsoever with the respondents no.1 and 2. As per respondent no.1 and 2, this petitioner was engaged by contractor M/s Vishal Kumar & Co. to whom the tender was awarded in June 2010 and this tender remained in force till 31.5.2011. Thereafter the tender was awarded to another contractor in the similar manner and the petitioner somehow joined the second contractor and worked with the respondents no.1 and 2 through contractor and therefore, respondents no.1 and 2 have no liability towards the petitioner.

9. In the wake of the aforesaid factual dispute, the first and foremost fact that the petitioner is supposed to prove is that he was engaged in the year 2009 and that too by the respondents no.1 and 2 and whether in the year 2010 he was adjusted with contractor Vishal Kumar & Company? It is for the petitioner to prove that the awarding of the tender was only a camouflage whereas, he was employee of the respondents no.1 and 2 throughout, hence, he was entitled for the relief claimed by him.

10. It may be stated at the very beginning that the petitioner has neither specifically pleaded the facts regarding his initial engagement nor has established the same by leading evidence. The petitioner in para no.1 of the claim has made very vague mention of the fact that he was engaged w.e.f. 2009 by the respondents no.1 and 2. It may be stated here that the year 2009 consisted of 12 calendar months. Had the petitioner been engaged by the respondents no.1 and 2 in the manner as alleged by him, he would have at least disclosed the date and month when he was

engaged. He would have disclosed in his pleadings as to how he came to know that there were vacancies with the respondents no.1 and 2 and those vacancies were liable to be filled up. The petitioner has not placed on record any advertisement ever published by the respondents no.1 and 2 anywhere inviting the applications for the posts of supervisor/clerk. The petitioner has neither pleaded nor proved whether an interview took place or he was taken in the job without any selection process. He has not said anything in detail. Vague nature of the pleadings to the effect that the petitioner was engaged against the vacant post w.e.f. 2009 without any appointment letter will not serve the purpose. Such a vague plea can not be accepted on the fact of it.

11. The petitioner led evidence and his affidavit is Ext.PW1/A. This affidavit also suffers for want of details. The claim petition has been reproduced word to word in this affidavit. In this affidavit also, the petitioner has submitted that he was engaged in the year 2009. Again the particulars of the month etc. are missing and this evidence is also not very effective to make this court to believe that the petitioner was actually engaged in the year 2009 and that too without any appointment letter. The petitioner could have led independent evidence on the record by examining other co-workers who had worked with him in the year 2009. He could have examined his family members, relatives etc. to prove that he was in the service of respondents no.1 and 2 in the year 2009. No such evidence was led and the self serving statement of the petitioner is vague and it can not be accepted on its face value.

12. When the petitioner was subjected to cross-examination, he could not stand by the test and got completely shattered almost on every point. He admitted in clear terms that he was never engaged by the respondents no.1 and 2 at any point of time. This admission is very crucial and can not be ignored. When the petitioner has pleaded throughout that he was appointed by respondents no.1 and 2 in the year 2009, it is not clear as to why he admitted the suggestion that he was never appointed by respondents no.1 and 2. This crucial admission has seriously damaged his case as it is the case of the respondents no. 1 & 2 that the petitioner was never engaged by them any point of time. When the cross-examination conducted on the petitioner is further examined, it is clear that he has complete knowledge of the mechanism in which the workforce is engaged by the respondents. He has admitted that the work is awarded to contractors every year and tenders are invited for the same. He has further admitted that the tenure of such contract is for one year. He has himself stated specifically stated that he was engaged by Vishal Kumar & Company for the work. He further admitted that the tender was awarded to Vishal Kumar & Company by the respondents no.1 and 2 which was operational w.e.f middle of June 2010 to June 2011. He further admitted that all the workers were engaged by Vishal Kumar & Company by itself. He further admitted that after Vishal Kumar & Company, the next contract was awarded to Dharampal contractor and so on. When the petitioner has admitted every fact clearly there is no question of holding that he has been able to prove his case. When the petitioner submits that the first contract was awarded to Vishal Kumar & Company and he was engaged by Vishal Kumar & Company, there is no question of his engagement in the year 2009 as the contract was given to Vishal Kumar & Company for the year 2010 to 2011. He has categorically stated that he was engaged by Vishal Kumar & Company. When Vishal Kumar & Company was not working in the year 2009 how the petitioner could have been engaged by the Vishal Kumar & Company. Thus it is very much clear that petitioner was engaged by Vishal Kumar & Company in the year 2010. He worked through Vishal Kumar & Company w.e.f. June 2010 to 31 May 2011 and plea of the petitioner that he was engaged in the year 2009 is false on the face of it and liable to be rejected, particularly when he has not led any cogent and convincing evidence to prove this fact.

13. When the evidence led on the record is further scrutinized with care and caution, several other facts are revealed which falsify the case of the petitioner. The petitioner got the record of the respondents summoned through one of the employee of the respondents Shri Avtar Singh Rana. He has appeared as PW2. He has tendered on record the tender notice for the year 2010-2011

as Ext.PW2/A1, for the year 2011-2012 Ext.PW2/A2, for the year 2012-2013 Ext.PW2/A3, 2013-2014 Ext.PW2/A4, 2014-2015 Ext.PW2/A5 and another similar tender for labour contract Ext.PW2/A6, another notice for the year 2016 as Ext.PW2/A7, for year 2017 Ext.PW2/A8. All these documents show that every year tenders were floated by the respondents no.1 and 2, bids were invited and opened in transparent manner whereafter tender was awarded to the highest bidder. Ext.PW2/C is the extract of details of the contractors starting from 14 June 2010 to 31.8.2018. Ext.PW1/D1 is attendance register of M/s. Vishal Sharma contractor for June 2020 and petitioner has been shown as one of the workman in this documents. All these documents prove that the requisite procedure was adopted by the respondents no.1 and 2 to award the work to the contractors and work was awarded to successful bidders. The petitioner has also worked under the contractors. This fact has been admitted by the petitioner himself. Ext.PW2/E is the extract of wage register of Baldev Singh contractor. Ext.PW2/F is the similar wage register of some other contractor. A similar document has also been proved on the record as Ext.PW2/G. All these documents prove one fact very clearly and categorically that the work was not executed personally by the respondents no.1 and 2 through their own workers, but tenders were floated and bids were invited every year. Several contractors use to participate every year and contract was allotted to the highest bidder. The successful contractors use to engage their own labour and the work was got done through them. The contract ended on its completion and new bids use to take place. From these documents it is thus very much clear that the respondents no.1 and 2 have followed the contract system and no workmen of its own were engaged for doing the work. The petitioner himself has admitted during his cross-examination that he was engaged by the contractors and not by the respondents no.1 and 2. Once he was engaged by the contractor, he can not claim himself as a employee of the respondents no.1 and 2 as the documents on record discussed hereinabove show that the payment was made directly to the contractor by the respondents no.1 and 2 and the contractor used to disburse the wages to his workers as per wage register. The workers of the contractors can not be become the workers of the respondents no.1 and 2 in any manner. The petitioner has though alleged that he was got adjusted by respondents no.1 and 2 through the contractors but he has not led evidence in this effect. It is not clear as to why the respondents no.1 and 2 shall support the petitioner in such a manner. It is again not clear as to why the petitioner was favourite of the respondents no.1 and 2. When the petitioner was not having any personal connection with the respondents no.1 and 2, why he was accommodated by them asking the contractors to take him on their rolls on contract. Generally, it happened that a person who is expert and experienced in doing a particular work under one contractors joins another contractor after the contractor is changed by the department. The reason is simple behind this policy. Such a worker is experienced worker and knows the works and contractor also find him suitable hence, same worker is engaged by several contractors on their turn. The petitioner is thus the worker of the contractors and he has failed to establish that he was engaged by respondents no.1 and 2 as daily wager and thereafter accommodated through the contractors. It is not understandable as to why the petitioner has examined Shri Avtar Singh who has brought the entire records that was against the interest of the petitioner. When Shri Avtar Singh was subjected to cross-examination he admitted everything in favour of the respondents for the simple reason that he was employee of the respondent and he could not have travel beyond the record which he has brought. He has categorically stated in cross-examination that labour was engaged by the contractors and not by the respondents no.1 and 2.

14. The petitioner has examined one Shri Rakesh Kumar as PW3 in the witness box who claims that he was worker of respondents no.1 and 2 and stands now retired. He has tried to support the petitioner by deposing that petitioner was employee of the respondents no.1 and 2 and there was no contract system before the year 2009. He further stated that work was taken by the officers of the department from Shri Ajay Kumar (petitioner). His statement does not lead petitioner's case anywhere as petitioner has himself has failed to prove this fact and simply by deposing that petitioner was employee of the respondents no.1 and 2, the position is not changed when there is no evidence in support of the petitioner's case. The respondent has again examined this very same

witness Shri Avtar Singh in the witness box who gave all the details in his affidavit and during his cross-examination nothing came out from his statement which would show that petitioner was engaged in the year 2009 by respondents no.1 and 2 directly and he was the workman of respondents no.1 and 2.

15. The learned Authorized Representative for the petitioner has argued that the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 have been violated in this case, and therefore, the petitioner has to be presumed the workman of the respondent no. 1 & 2. When the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 are gone through it is clear that no provision of this Act makes the employee of the contractor as employee of the principal employer. Law is well settled to the effect that only in those case where the contract is proved as a camouflage prepared for formality sake by the principal employer in order to show that any of its workman as workman of contractor, only then the workman can be treated as a workman of the principal employer. In order to prove this fact it is to be proved by the petitioner that neither any contract took place between the employer and the contractor nor the payment was made by the contractor and nor the parties intended to enter in a contract but such a document was prepared only as an eyewash only to meet out the requirements of Contract Labour (Regulation and Abolition) Act. In the case in hand, there is no evidence to show that the contract was a mere camouflage. In this case it has been proved from the material on the record that every year tenders were invited and opened and thereafter the successful contractor was awarded the work and such contractor used to work for a period for one year. The payment was made to the contractor and there was no direct relationship between principal employer and the workman. All the documents have been tendered on the record to prove that requisite procedure was followed by the respondents no.1 and 2. Even in case it is presumed for a while that there are some violation of the Contract Labour (Regulation and Abolition) Act, even then there is provision of punishment provided in the Act itself and it is nowhere provided that in such a situation the workman of the contractor shall become the workman of the principal employer. Thus the argument raised on behalf of the petitioner is without any merit and can not be considered in support of the petitioner's case.

16. Thus when the petitioner is not as a workman of the respondents no.1 and 2 and there is no relationship of master and servant between the respondents no.1 and 2, therefore the provisions of Industrial Disputes Act are not applicable. In case his services were terminated by the contractor at any point of time, it is between the contractor and the workman and the principal employer has nothing do with the same. The remedy available to the petitioner if any, is against the contractor and for no stretch of imagination the petitioner can become a workman of the respondents no.1 and 2 and can not claim relief of reinstatement or compensation etc., hence issue no.1 is decided in negative.

Issue No. 2

17. In view of the above discussions on issue no.1, it is held that there is no merit in the case of the petitioner hence this issue is also held in negative.

Issue No. 3

18. The petition is maintainable as it has been filed in support of the reference, hence this issue is decided in negative.

Issues No. 4, 5 and 6:

19. The petitioner has no cause action, no locus standi to file the claim as well as the petitioner has not come to the court with clean hands because he was not employee of the respondents no.1 and 2, hence these issues are held in negative against the petitioner.

Issue No. 7 :

20. No necessary parties have been pointed out in this case who were required to be added in this case, therefore this issue is held in negative.

RELIEF

21. In view of my above discussions, the present claim petition fails and is accordingly dismissed. Parties are left to bear their own costs.

22. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 30th day of June, 2023.

Sd/-
(HANS RAJ),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

CHANGE OF NAME

I, Poonam Kaundal w/o Sh. Pawan M Kaundal, Block No. 14, Flat No. 16, Housing Board Colony, Sanjauli, Tehsil & Distt. Shimla-171006 declare that I have changed my name Poonam Kumari to Poonam Kaundal. All concerned please may note.

POONAM KAUNDAL
w/o Sh. Pawan M Kaundal,
Block No. 14, Flat No. 16,
Housing Board Colony, Sanjauli,
Tehsil & Distt. Shimla-171006.

नियन्त्रक, मुद्रण तथा लेखन सामग्री, हिमाचल प्रदेश, शिमला–5 द्वारा मुद्रित तथा प्रकाशित
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